

Land, Water, Rights

Voices from the Tibetan Plateau to the Mekong Delta



EARTHRIGHTS INTERNATIONAL



Land, Water, Rights

Voices from the Tibetan Plateau
to the Mekong Delta

A collection of reports by students of the EarthRights
School Mekong

Land, Water, Rights

Copyright © 2012 EarthRights International

www.earthrights.org

US Office
1612 K St. NW
Suite 401
Washington, DC
20006

tel: +1 202 466 5188
infousa@earthrights.org

Southeast Asia Office
P.O. Box 123
Chiang Mai University
Chiang Mai 50202
Thailand

tel: +66 81 531 1256
infoasia@earthrights.org

Printed in Thailand

Cover photos courtesy of Mekong School alumni Tsering Drolma and Ly Quoc Dang, who took them just outside their homes near the source and mouth of the Mekong River.

Mother Mekong

Tibet

དུངས་གཙང་གི་རྗེ་ལྷནི་གངས་ཅན་ཨ་མའི་སྐུ་ལྷོ་ཡིན།

Gtsang gi rdza chu ni gangs can a'mi nu zho yin

The holy Mekong River is the Snowland mother's milk

China

你源远流长 孕育天下儿女

Ni yuan yuan liu zhang yun yu tian xia er nu

You run a long course as the source of the people's lives

Burma

အမေ့ရင်ခွင်လို ကြင်နာမှုတွေဝေ၊ လိုအင်ဆန္ဒများဖြည့်ပေးတဲ့ မြစ်ရေ ထာဝရအမြဲစီးစေချင်
အမေ့ရင်ခွင်လို ကြင်နာနွေးထွေးမှုတွေဝေ၊ လိုအင်ဆန္ဒများ ဖြည့်ပေးတဲ့ မြစ်ရေ ထာဝရ အမြဲ
စီးစေချင်

May yin korn lo ginar nway htwe mu twa way,

lo inn sandamyar phaybayta myit

yaa Htarwara amyair see xay chin

The river is our mother's heart and love;

She gives us warmth and care

We wish for our mother river to flow freely forever

Lao PDR

ແມ່ນ້ຳຂອງໄຫຼຜ່ານແດນລາວຊາວປະຊາໄດ້ຕື່ມກິນໃຊ້

ຢາກຂໍໄວ້ໃຫ້ມີແມ່ນ້ຳເປັນຄວາມງາມ

ປະດັບໄວ້ໃນໃຈລາວຕະຫຼອດໄປ

Mae nam khong lai phan daen Lao xao pa sa dai duem kin sai

Yak kor wai hai mee mae nam pen kwuam ngam

Pa dab wai nai jai Lao talod pai

The Mekong River flows through the land of Laos

We Lao people rely on it for our lives

We wish to hold the beauty of the Mekong in our hearts forever

Thailand

คือสายน้ำที่พวกเราได้พึ่งพาด้วยชีวิต
ที่เชื่อมโยงให้พวกเราได้เป็นมิตร
คือรัก คือความห่วงใย

*Kue sai nam thi phuak rao dai pheung pha duay chiwit
Thi cheuam yong hai phuak rao dai pen mit
Kue rak kue khwam huang yai*

This is the river that we depend upon for our lives
The river connects us in friendship
It is what we love and care for

Cambodia

**យើងសុំអោយទន្លេមេគង្គស្ថិតស្ថេរគង់វង្ស
ស្រស់បំព្រងសំរាប់ផ្តល់ធនធានដល់ប្រជាជន**

*Yer som oi ton ley Mekong kons tat tey kong vong
Yer sa ror sam rub pdol to tien mor jor jeiy jon
We wish the Mekong long life and beauty
She offers resources for our people*

Vietnam

*Sông Cửu Long chảy vào lòng biển cả
Mang điệt hò hòa lẫn với phù sa
Cùng bồi đắp cho mối tình sông nước
Của những con người hồn hậu thiết tha*

The Mekong River runs into the open sea's entrails
Bringing songs with her silt and raising her love
Through waterways past sincere and good-hearted people

Chorus

**Shall we come together to protect our river
Holding hands to be as one
The Mekong is our mother
We are all children of her
Feeding us to be alive**



Languages Spoken by Mekong Alumni

Amdo (Tibetan)

Brao

Burmese

Chinese

Darwei

Hmong

Jarai

Kachin

Karen

Kavet

Kham (Tibetan)

Khmer

Khmer Krom

Khmu

Krueng

Lao

Lisu

Mon

Naxi

Pa-O

Palaung

Phutai

Pumi

Shan

Tampuen

Thai

Thai Lue

Vietnamese

Project Sites

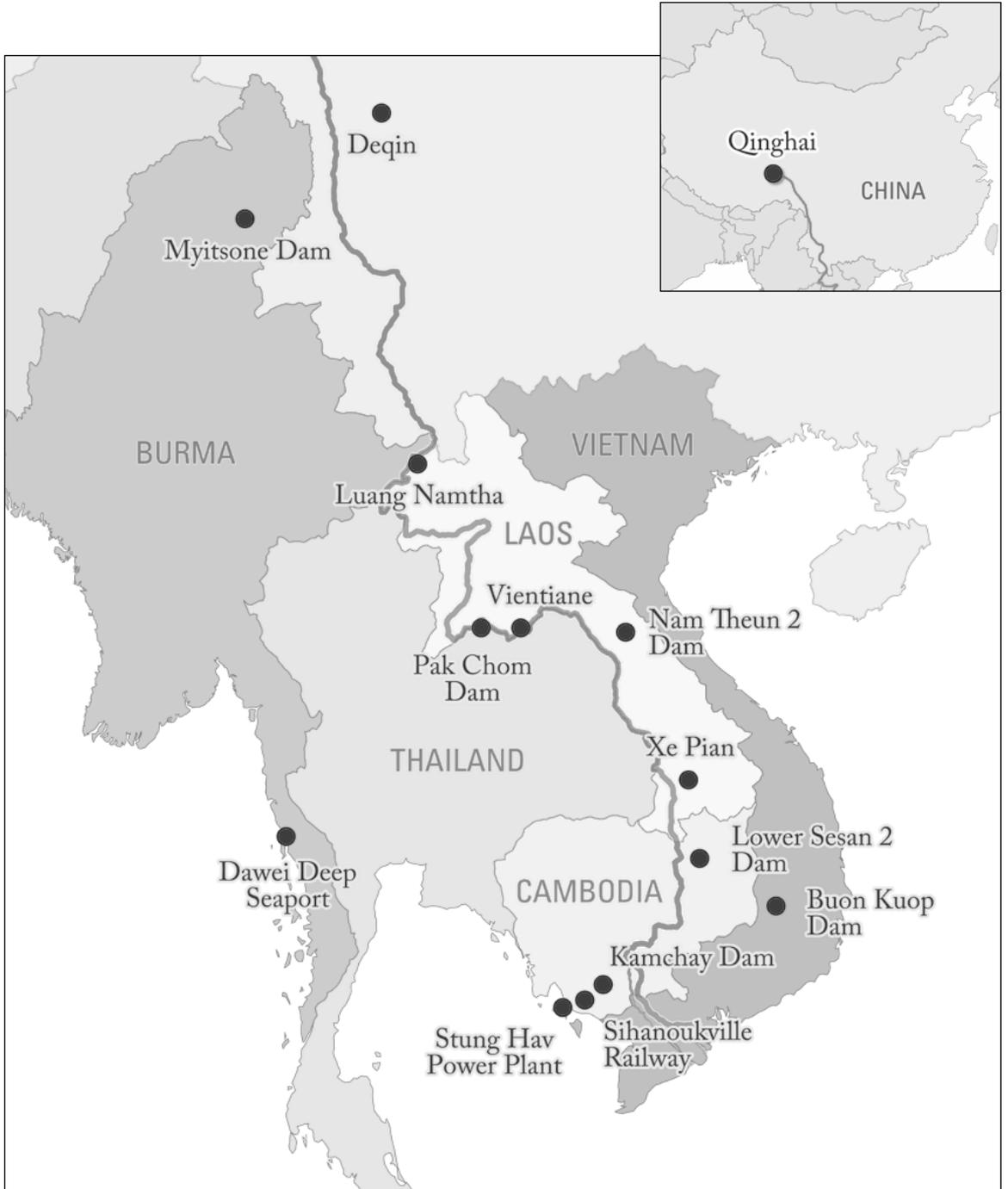


Table of Contents

- 13** **Holy Water**
A Study of Sacred Tibetan Beliefs
by Tsering Drolma
- 17** **Impacts of Ecological Reconstruction Projects on Tibetan
Nomadic Life in Qinghai**
by Skäl Bzang Metok
- 29** **The Inadequacies of Chinese Overseas Investment
Regulations**
A Case Study of the Myitsone Dam, Burma
by Zuo Tao
- 47** **The Role of Burmese and Kachin Civil Society in the
Suspension of the Myitsone Dam**
by Kyi Phyo Wai
- 57** **World Bank and ASEAN Involvement in Labutta New Town
Construction Projects Following Cyclone Nargis**
by Naw Grace
- 68** **Local Action, Central Policy, and the Law**
The Dawei Deep Sea Port and Special Economic Zone
by Myo Aung
- 80** **Potential Impacts of the Pak Chom Dam on Local Food
Security in Loei Province, Thailand**
by Tipakson Manpati
- 94** **The Impacts of Chinese Rubber Concessions on Local
Livelihoods in Northern Lao PDR**
A Case Study of China-Lao Ruifeng Rubber Company in Long
District, Luang Namtha Province
by Athu

- 106** **The Effects of Elite Recreation Projects on Local Food and Social Security in Vientiane, Lao PDR**
by Thepvyayha Suksayna
- 118** **Impacts on the Water Quality of the Xe Bang Fai River as a Result of the Nam Theun 2 Dam**
by Kong Xebangfai
- 131** **Livelihood-Related Conflict Surrounding Dam Construction Planning in Xe Pian – Xe Nam Noi**
by Sieng Xe Namnoy
- 140** **Watering Down the Law**
A Legal Analysis of the Proposed Lower Sesan 2 Dam Project
by Panha
- 156** **Local People’s Opinions on the Potential Impacts of the Kamchay Dam**
by Peou Chansopheakny
- 167** **Public Participation in EIA Processes**
A Case Study of the Proposed Power Plant at Stung Hav, Sihanoukville
by Khiev Kanal
- 175** **Community Involvement in the Decision-Making Process of an ADB Funded Railway Rehabilitation Project**
by Leng Sarorn
- 185** **Negative Impacts of the Buon Kuop Dam and the Application of the Clean Development Mechanism**
by Tran Minh Tai

Acknowledgments

We would like to thank the Conservation Food & Health Foundation, the Foundation to Promote Open Society, ICCO, the MacArthur Foundation, Oxfam Australia and an anonymous funder for their generous support of EarthRights School Mekong and the Mekong Alumni Program. Thank you to the staff, management, and board of directors at ERI for your inspiration and guidance. Thank you to our friends at the Bank Information Center, Mekong Watch, International Rivers, the International Accountability Project and the NGO Forum on the ADB, as well as our special guest presenters and network members for the time and effort you have dedicated to supporting our students and alumni. Thank you to the community members at Pak Mun, Rasi Salai, Huay Ra Ha, Mae Moh, Kaeng Seua Ten, and along the Salween River for sharing your courage and insights. Finally, thank you to all of the interviewees in the six Mekong countries who generously gave their time to assist our researchers.

Preface



The Mekong River has fed and nurtured the people of Southeast Asia for thousands of years, providing food, water and stable livelihoods. Today the river sustains over sixty million people, generating billions of dollars of income every year. It is also home to some of the world's most critically endangered species, such as the Irrawaddy dolphin and Mekong giant catfish.

Yet, this fragile ecosystem is facing grave threats. Throughout the Mekong region, hydropower dams, plantations, mines, power plants and other large-scale development projects are displacing communities and limiting access to the river's bounty. China has already built several large dams on the Upper Mekong, and the governments of Cambodia, Laos and Thailand are planning eleven more on the Mekong River's mainstream. If these dams are completed, they will block major fish migration routes and disrupt the natural flow of this vitally important river. China's dam construction on the Upper Mekong has already caused concerns among citizens downstream in northern Burma, Thailand and Lao PDR.

It is essential for citizens of all the Mekong Basin's six nations to work together to promote greater accountability in development planning. A new generation of Mekong activists is making this happen. Over the past six years, EarthRights School Mekong alumni have been working together to advocate for greater human rights and environmental protection in the region. Speaking twenty-eight different languages, they hail from communities at the source of the Mekong in Tibet all the way to the mouth of the river in Vietnam's Mekong Delta.

In sharing these reports from their communities, Mekong School Alumni hope to inspire citizens throughout the Mekong region to consider the social and environmental impacts of hydropower dams, mines, power plants and other large development projects and to join together to advocate for greater public participation in development planning.

LAND, WATER, RIGHTS

"We are the new generation of Mekong activists. We need to cooperate with one another more than our leaders have done in the past."

- Tanasak Phosrikun, alumnus from Ubon Ratchathani in Northeastern Thailand

"When you learn to understand others' perspectives, that is when you find a solution."

- Tibetan alumna, who traveled the length of the river sharing her experiences

"If fish and water can cross borders, why can't our love? I've always felt proud to be Chinese. But now, when I see the impacts of Chinese projects, I feel bad."

- Jia Jia, Chinese environmentalist

"Together we can save the Mekong. Instead of arguing amongst ourselves, we should take this opportunity to engage in constructive dialogue."

- Yiling, graduate student in Kunming, China

"The people of China, Burma, Laos, Thailand, Cambodia and Vietnam are brothers and sisters; we have the same mother. We will work together to protect the Mekong, and ensure she flows freely."

- Thepvayha, environmental researcher in Vientiane, Laos

"Communities along the Mekong don't know what's happening, especially in Cambodia. Everything's changing, but people don't understand why. We need to raise awareness. We have to pressure our governments to address our concerns."

- Sarorn, Cambodian environmentalist

"Safeguard standards for development projects must be legally enforced to eliminate negative impacts. There must be meaningful engagement with communities already suffering the effects of large-scale development projects."

- Nov Piseth, Cambodian lawyer



Holy Water

A Study of Sacred Tibetan Beliefs

by Tsering Drolma

Ms. Tsering Drolma works for the Kawagebo Culture institute, a grassroots Tibetan NGO in her hometown in Deqin Country, Yunnan. As a documentary film maker, Drolma draws upon Tibetan spiritual beliefs, wisdom and songs to promote environmental and cultural conservation along the upper Mekong.

According to Buddhism, the world has two parts. One is the physical world and the other is the emotional world. The physical world refers to the world around us, including our bodies and the environment, the relationship between humans and nature, and the relationship between one human and another. All of these belong to the material world. The emotional world, however, is the more significant of the two. Why? Because when we live in the emotional world, we can feel whether we are comfortable or not, and whether we are happy or not when we stay together. All of these feelings are determined by the emotional world.

This is how we Tibetans make merit: everybody prays with their heart, especially on their way to a pilgrimage site such as a holy mountain. The more one prays, the more strength is added to the mountain. If you do not respect mountains and water and you do anything you want with them, they become one of your tools or part of your own property. We Tibetans have good merit because we do not take wealth very seriously. If we have a piece of gold we will bring it to Lhasa and paint the Buddha statue's body with it. If we cannot do that, we offer it to the temples because we cannot bring it to the next life.

Besides animal attributes, what do human beings have? If we only work to eat three meals a day we are no different from animals. But nowadays people do just that; they are working only to eat, like animals. It is because we have faith in our life that our lives begin to have meaning and power.

We always explain our culture to outsiders. It seems that we have become cultural interpreters or spokespeople. But when we talk about a specific pilgrimage there is a lot of background. Why should a man go on a pilgrimage?

He knows why. Whether he is walking around a mountain, the water, a stupa or a temple



there are a lot of reasons behind his actions. He may have profound experiences. I believe that the feeling of pleasure on the way and the happiness from fulfilling one's aspirations are hard to understand as an outsider.



These things cannot be experienced by outsiders. How can we experience other people's feelings? It's really difficult to achieve their emotional state. In this case, image has an advantage because it can visually record things. But image also has some limitations, especially documentary film. It cannot surpass many things and sometimes it cannot even compare with a pen in our hands.

Pens can record things that transcend time and space, but cameras cannot.

If you do a lot of good things then you can get great rewards. If you do a lot of bad things then of course the rewards will be less. We are not separate entities, but a group of living beings. All the behaviors of living beings are related to each other. There are a lot of group behaviors. Group behavior makes group karma, which is the result of all beings' behavior. So, good behavior creates a good environment. If all living beings have bad behavior, our common environment will be destroyed.

Actually, human beings must adapt to nature, not make nature adapt to them. This is part of Chinese culture as well. Han Chinese culture also says that we should respect nature, isn't that right? I have read *Xiao Yao You* by Zhuangzi several times and I conclude that you must respect and understand nature so that your heart can be unblocked. This is the core value of Zhuangzi. People nowadays say that man can conquer nature. This is because people are under the control of material things. Old sayings teach that the mountain has its own soul.

Once the mountain's soul has enough strength, the whole village will benefit. This means individuals will also benefit from it. You will not get ill or cold. You will be safe. Actually, the mountain's soul is your treasure. This is the traditional understanding of treasure. People today,

however, consider material things as treasure. Except for gold and silver, nothing is now regarded as treasure. No one recognizes traditional values anymore. People have discarded their old values, and now the world will become nothing but silver and gold.



Water is just like our mother. There's an old saying, "water in the place where sky can be seen is always clean." Water is the source of all creatures. I remembered this when I was talking with Mr. A Zong from Yubeng village. I asked him what is in his mind when he worships at the Sacred Waterfall. He said, when we are worshipping we can't act like fools and lower our heads to walk.

He said all the mountains are Bodhisattvas, and this mountain is a Thousand-Buddha Mountain. We must visualize thousands of Buddha holding pure water in their hands, using their compassionate desire to baptize all living beings. We must visualize thousands of Buddha blessing us. If we do, the falling water can be totally changed. Something different happens at that point. When people are singing Mani songs under the Sacred Waterfall, the waterfall becomes stronger and more powerful, until it completely breaks away from its own natural attributes.

In the past people had a bigger and broader consciousness, but now they have only their personal thoughts, and are more individualistic.

Buddhism teaches us how to think about the whole universe, and to pray for all living beings. Not for ourselves. Firstly, right now most people care about development, speed, improvement, amplitude and frequency. This is what the state advocates. A second point is the power of national policy. Villagers have no chance to say "no." Obedience is their only way to respond. What can they do? The third point is the realization they can do nothing to stop this.

When compensation for forced resettlement became a source of income, people thought it was time to take advantage of the government and get more money. That's how some villagers think, at least. They don't think about the future. This means as people also become more and more selfish, no one thinks about the next generation.

In the past no one acted like this. They always thought about the next generations. There were not many houses. But now you can go and take a look, there are houses on the both sides of the road. All the buildings are very new. Some of them have just started to be built. And the houses are extremely large. They built big houses near the river banks. I saw that a few days ago when I was coming back home.

If you have faith, then you can protect the things around us, and values will not be rejected easily. There will be a system to prevent this. If one has no religion or beliefs, all things can be easily changed without resistance.



Nature provides a perfect world for humans to live in. Humans also adjust well physically for survival on this planet. The water, the sun, and the temperature are suitable for humans. Humans and other living beings cannot stand to be too hot or too cold. We have all we need, but we don't use what we have. When nature changes a little bit we feel uncomfortable. Then we have more demands. Humans become more and more greedy, and because of greed we hurt each other and nature. Then it becomes the karma of all living beings. Ninety percent of the people in this world are becoming greedy but they don't know it.

Human greed is getting bigger and bigger. The result is harmful. Nation states or other agencies are unintentionally helping us to develop our greed, with good reason sometimes, but sometimes not. If I hurt you, you will take revenge. I will hurt you again. Revenge is endless.

Impacts of Ecological Reconstruction Projects on Tibetan Nomadic Life in Qinghai

by Skal Bzang Metok

Ms. Skal Bzang Metok works in Qinghai Province, empowering Tibetan women and their communities to design and manage projects providing basic necessities such as water, fuel, electricity, health care, and basic education.

Introduction

Ecological migration, or ecological resettlement, is a government-led initiative to develop the western regions in China, allow degraded landscapes to recover, and improve the standard of living of its inhabitants. In 2003, the provincial government in Qinghai implemented an ecological migration project for the three rivers source where most of the people are Tibetan nomads. These Tibetan nomads have been totally dependent on animal husbandry for many generations and some of the semi-nomads were doing both farming and herding before they were resettled. This project is divided into three types of policy for these eco-migrants as well as three types of eco-compensation. This paper describes various views on the causes of ecological degradation of the grasslands, the policy of relocation as well as experiences of relocation from Tibetan eco-migrants' perspectives, the government's perspective and other researchers' perspectives.

Background

Qinghai province is located in northwestern China. Qinghai is a multiethnic province; the main ethnic groups are Han Chinese and Tibetan, but the province also has Mongolian, Hui, Salar and others. The Tibetan's total population is 541 million in China; 40% of Tibetans are nomads and semi-nomads. Tibetan people have their own beliefs, customs, language, values and lifestyles in Qinghai province. Generally, most Tibetan people are famers and nomads. This usually makes Tibetan nomads separate from the rest of society; generally they live in remote areas. Thus, they lack information, education and work experience such as in construction work from the outside. Many only know how to raise livestock in the grasslands but lack other skills.

Most Tibetan nomads cannot speak Chinese so it is difficult for them to communicate with other ethnic groups when they travel to the city or other urban areas.

In 2003, the Qinghai government implemented an ecological immigration project in Tibetan areas. Many people who live in the three rivers (the Mekong, Yangtze, and Yellow Rivers) source area have to relocate. The government stated that the reason for relocation is the over grazing of animals leading to grassland degradation. According to government information, these relocated nomadic people receive fair compensation as well as special benefits such as free government trainings, setting up local companies to employ eco-migrants, and financial aid for eco-migrant's children's education. But today, most relocated people suffer from poverty and they do not know how to reduce the poverty in their lives. The main problem is that they have not received enough compensation so some of the eco-migrants have become eco-refugees.

This research mainly took place in the Hainan Tibetan Autonomous prefecture, Guoluo Tibetan Autonomous prefecture and Yushu Tibetan Autonomous prefecture. Tibetan nomadic people are indigenous people in Qinghai province and have spent many thousands of years in their pasture areas. They maintain their own traditional ways to protect the natural environment and Tibetan Buddhism makes them respect nature and promotes living in harmony with nature.

Differing Views on Grassland Degradation

The Chinese Government's View

According to the Chinese government's view, the causes of ecological degradation in the grasslands are over grazing animals, human activities such as hunting animals in the grasslands, as well as pikas, a native rodent. The government claims that these three issues cause grassland desertification. According to government research, China's grassland ecological protection program has made positive progress in Qinghai province, Sichuan province, and Inner Mongolia. However, the research showed that the overall trend of the deterioration of the grassland ecology has not been fundamentally curbed. 90 % of natural grassland is becoming degraded in different places in China. The government says that overgrazing is the main reason leading to grassland degradation. For example, Ruoergai County is under Sichuan province and in the past 50 years, Ruoergai county's human population increased from 22,000 to 70,000 people and cattle increased from 33,0000 animals to 120,0000, an increase of 155%. The grassland size has not changed, but yak and sheep populations have increased several fold in the grasslands.

In 2010, the key natural grassland's livestock overload rate was 30% in China. In addition, 264 pasture area counties and semi-pasture area counties' natural grassland livestock overload rate is 44%. The grassland has not recuperated, and the capacity of production continues to decline. Deteriorating ecological conditions restrict sustainable development in pastoral areas. Degeneration of the grassland ecosystems leads to downstream rivers drying up, dust storms, and desertification; soil and water loss also becomes a threat. Why are the herdsmen migrants? Mr. Du Fachun from the Institute of Ethnology & Anthropology, CASS remarks that "the government's mainstream view" is that the herdsmen migrate from the three rivers source because the land is astringent and most of the area is not fit for human habitation.



The pika is an endangered animal nowadays. Some researchers stated that the pika is causing grassland degradation so the local government uses chemicals to reduce the number of pika in the grasslands.

Therefore, implementation of ecological migration is to ease the population distribution and the natural ecological carrying capacity. This is also a realistic choice of economy and ecological harmony in the three rivers source's region as well as help famers and nomads to renew their ideas. From the government's perspective, ecological migration is conducive to the rational development and utilization of grassland resources, protection and restoration of grassland ecological system, is helpful for developing productivity, increase herdsman income level, improve the quality of life of herdsman and construction of well-off society.

The Tibetan Nomads' Views

According to Tibetan nomads interviewed for this paper, ecological degradation is caused by over-grazing, land division, mining, and digging for caterpillar fungus. Caterpillar fungus is a type of herb; in Chinese it is called "Dong Chun Xia Cao." Caterpillar fungus is a very valuable medicine in China and fetches a high price in the market, and usually it grows in high plateau areas. The Tibetan Plateau is the main source of caterpillar fungus. Because caterpillar fungus fetches a high price in the market, many people such as students, famers, nomads, businesses men and common people go there to dig caterpillar fungus. Caterpillar fungus grows in the earth, so if people want to take it from the earth, they need to dig very deeply. In order to earn quick money, many people don't put the earth in its original place after they dig, thus the grass cannot grow properly in the digging areas. These problems are causing grassland desertification. An interviewee from the three river's source remarked, "Before there was no desert here, but right now we can see a part of the grassland becoming sand and rocks, the rivers are getting smaller and some

have even disappeared. I think this is an omen for grassland desertification in the future.”¹

An interviewee from Hainan prefecture in Qinghai province expressed, “I think the main problem is the mining of resources in the grasslands. A mining company from Shanxi province pretends they are mining for copper in our township, but I think they are mining for gold in our land. Every day, I can see they move gold to the city because the color looks yellow, so I believe it is not copper. There is a chemical water reservoir in our valley which is created by that company. In order to make the gold and earth separate, the workers in that company use chemicals to take the gold from the water. If the water fills the reservoir, they release the chemical water into the Yellow River, but if the water leaks out from the valley, it will affect the people and animals in our township and even other places. For example, if a small amount of chemical water is drunk by animals such as yak and sheep, it will cause more than 30 animals to die at the same time. The worst thing is that when they release chemical water into the Yellow River, many people downstream drink the water, so people downstream will get many kinds of diseases if they drink chemical water over many years. But unfortunately, many people in Qinghai province don’t know this situation, even people who live in the affected area. Additionally, I cannot see grasses in the mining areas, I think the grasses are not able to grow up in such polluted air conditions.”²

An elderly nomadic man named Zhaxi from a Tibetan community in Qinghai province stated, “Over-grazing is a serious problem that causes grassland degradation. When I was young, my family just depended on animal husbandry to survive and at that time, my family had different animals such as yaks, sheep, goats and cows, but the animal population was not very big, I think the total population was only 100. These animals had their own suitable grassland to graze on. For example, some grass grows very soft, so it’s suitable for sheep and cows to graze on that land, but some grassland is just suitable for yaks, because they eat long and thick grasses. Also, some grassland is suitable for goats because they go everywhere and also they walk fast and never stay in the same location so goats need more space than other animals. But, as the economy develops, nomadic people, including me, want to augment our family income by increasing livestock because nowadays the animal price is very high. On average, one sheep costs 400 RMB, so we try our best to increase our animals in two ways. One is traditional animal husbandry and another is to buy huge numbers of animals from outside. Thus, each household has a lot more animals than before; a rich family has 1,000 sheep nowadays. But recently, I noticed the grassland has become abnormal because in some areas, I can see desert or no grass, so I think it must be over grazing that makes this phenomenon.”

Mr. Cairang from one Tibetan community in Qinghai province mentioned, “I think land division is probably causing grassland degradation because I can see after the grassland is divided for each household, the grassland is not balanced because all the animals from that area are prevented from going onto other families’ land. Thus, no matter how many animals you have, they can only graze on your land, even if your grassland cannot support your animals. For example, a family with only a few members has lots of animals but they only have a small grassland but a family with many members has a few animals but they have a large grassland so both families’ land is

1) Interview with an eco-migrant in one Tibetan community in Qinghai province, September 22, 2011.

2) Interview eco-migrants from Hainan prefecture, September 25, 2011.

not balanced for the animal population. Thus, animals cannot equally eat the grasses in the same grassland. Finally, a small grassland cannot feed such huge numbers of animals, so the grassland becomes desert and no grasses grow year by year.”



Caterpillar fungus is a famous herb. Research proves that it can cure many diseases such as tuberculosis, coughing, anemia, and back and knee pains and that it also increases strength.

Differing Views on the Policy of Relocating Tibetan Nomads

The Chinese Government's View

The eco-migrant policy was implemented in 2003 and the government claimed it was aimed at protecting or reconstructing the three rivers source area in Qinghai province. The three rivers area is 152,300 square kilometers. The three rivers source ecological protection and construction project layout is divided into three levels. The first level is the core zone, a strictly protected area, mainly Yushu, Guoluo, Hainan, Huangnan's 16 counties and Golmud City's Tanggula Town with a gross area of 31,218 square kilometers. These strictly protected areas are located in Qinghai province. The three river's head is China's largest water conservation and ecological area. The majority of the downstream region and even the country's sustainable development play an important role in the ecological barrier. The three rivers source ecological system is complex and fragile and rich species are easily damaged. In recent years, human activity in this region has become increasingly frequent, causing grassland overgrazing, the over-digging of caterpillar fungus, and the unsustainable development of resources.

The over-grazing of animals in the grasslands and frequent human activities aggravate this region's ecologic degradation. The government's eco-migrant policy is encouraging nomads to relocate to nearby townships or counties. The government support housing for eco-migrants as well as compensation. In 2003, the Qinghai province government claimed to have started managing and protecting the environment. The eco-migrant relocation is a very important project for ecological repair. In 2005, the state invested large sums of money to start three river source area

ecology protection and supporting projects such as eco-migrant projects, artificial rainfall projects and so on. These projects are aimed at recovering the grass in the grasslands. For example, the government asserts that human activities contribute to grassland degradation: if there are no people in the grasslands, the grass will naturally recover. The artificial rainfall project is because of climate change; there is little rainfall in the grasslands, so the government uses aircraft to water the grasslands. The government has set up training programs for eco-migrants such as sewing, stone carving and Tibetan blanket making programs. They also set up a Mandarin language program to help the eco-migrants learn Chinese. These programs are meant to help the eco-migrants to easily find jobs. Additionally, the government supports tuition fees for the children of eco-migrants and sends them to study outside of Qinghai province. The government also set up local companies in order for eco-migrants to obtain employment after they learn the skills that the government provides. An eco-migrant household receives compensation of 2,000 RMB (US \$317) each year. If a family has children under 16 years old or people over 60 years old, the government gives an additional 1,500 RMB (US \$238) to that family.

The government claims that the protected areas are established to stop exploiting mineral resources and ecologically destructive projects in the three rivers source area. The government claims the eco-migrant policy is aimed at recovering the grass in three rivers source area and to improve eco-migrant's living conditions. These eco-migrants are nomads and semi-nomads so they are totally dependent on herding. Thus, after grassland degradation, they are only able to herd half the number of livestock as before. Therefore, the government encourages nomads to relocate to nearby townships as they say this is the only way their living conditions will improve. In order to recover the grasslands and improve eco-migrant's living conditions, the ecological protection and construction project includes: reducing the number of animals grazing on the grass, returning farmland to forest, ecological deterioration management, preventing grassland and forest fires, managing grassland rodents, soil and water conservation, management of facilities and capacity building, farmers and herdsman production and living infrastructure construction projects, the ecological migrant project, small cities and towns construction, a human drinking water project, an artificial rain enhancement project and so on.

The Eco-Migrants' Views about Relocation

Each prefecture in Qinghai province has a different relocation policy for eco-migrants. Some nomads are relocated under the local government's guidance. Before these nomads were relocated, they heard that the government would give financial support for each year as compensation; additionally, the government arranged for living places for these nomads to live. The houses are made of brick and cement and cost nearly 15,000 RMB (US \$2,380) for eco-migrants, but because the housing quality is not very good, the eco-migrants use their own money to add some brick and cement to make their houses stronger and to decorate them. The nomads sold all their livestock before they were relocated because they were going to be farmers in the future; however, they did not have preparation or confidence. After the nomads relocated to the new places, they had many problems. Some of the eco-migrants went to the grasslands and became nomads again because they could not adjust to the new urban life. But some had no livestock left to graze, as well as no money to buy the livestock back again, so they had to stay in the new places. Nomads are different

from famers; because they have spent many generations on the grasslands raising livestock, they have their own culture that is different from Tibetan famer's culture in many ways. Thus, there are many cultural difficulties between the Tibetan nomads and Tibetan famers after they are relocated and have to live together. Most eco-migrants are nomads from remote areas so they received less education because many never attended schools when they were young. After the central government's nine years compulsory education project was implemented in these areas, Tibetan nomad's children started going to school, but some parents still kept their children at home. Nowadays, only a few nomads receive education as result of not following the Nine Compulsory Education policy. Nomadic parents keep their children from going to school because the children need to take care of the livestock; if they went school, their family would have no extra help herding the livestock. Thus, now these nomads cannot speak, read or write Mandarin. Secondly, nomads lack understanding about the outside society. Usually, the three rivers source area nomads live in high plateau areas so they have less connection with society and do not know how to live in a competitive society. On the grasslands, they do not have economic pressures but after they become famers, many pressures come to them. Thirdly, many nomads have never done construction labor, or any type of labor other than herding, but after they became famers, they noticed that the compensation money could not support their lives so they tried to find construction jobs. But because they had never done such labor and had no experience, the employers did not want to hire such unskilled people. This causes many eco-migrants to have difficulty finding a job.

Even though the government invested a large amount of money in the eco-migrant relocation project, some areas still did not receive support from the government such as the training programs and eco-compensation which are designed to support the eco-migrants to sustain their lives. Some nomads sold all their livestock to relocate to the local county after the local government implemented the environmental protection law. Many relocated nomads expected to receive compensation from their local government when they ran out of their own money received from selling their livestock. In the beginning, these nomads had sufficient money from selling their livestock but they had no idea how to manage their money. So, they just kept their money at home and did not find any work after being relocated; thus, slowly their own money was finished. Then, they do not know what to do next because they need to take care of their families, including old people and children. Now, some of these adult nomads are doing some construction work in order to sustain their lives, but at the present they only can scarcely afford school tuition fees for their children. Additionally, most nomads only know how to graze livestock and have no other skills. Without their animals, they feel depressed and hopeless for their future. A thirty-year-old woman stated, "We are not nomads because we don't have livestock. We are not famers, because we don't have land. We are also not city people. We are not workers because we have no jobs."

A village leader from Qinghai province remarked, "The Tibetan high plateau is one of the protected areas in Qinghai province; the government gives us 6 yuan per hectare if we do not allow our livestock to eat the grass in the protected area of our land, but if we let our livestock eat the grass in the protected area every year, the government still gives 1 yuan for one mu as a subsidy. Most villagers tried to prevent their livestock from eating grass close to the protected area for two years after the environmental protection law was implemented in our county because they wanted to get some money from the government. Unfortunately, we still have not gotten the compensation for two years. We always ask the government about the compensation. We told

them if there was no any compensation for us, we would like to graze our livestock on our land because we do not want to wait year by year without any compensation for environmental protection. Actually, the villagers have protected the environment for two years without compensation, so now everybody questions whether they should continue to protect the grasslands or not. The officers said that they still hadn't finished the compensation work in the whole county and after they finished the statistics for each household, then they would give two-year's compensation for each household. The government also encourages us to wait more than two years. If the compensation money still does not come to villagers' hands, the government is willing to give four years compensation at the same time. The environmental protection law is encouraging us to close a part of our grazing land. Each household has 1,000 to 2,000 mu that are closed to livestock right now."

The government of Qinghai province has established houses for impoverished nomads in three rivers source area. One house is costs 15,000 RMB (US \$2,380). The local government provides these houses and the government doesn't allow nomads to sell the government houses. Thus some nomads are relocated after they sold their livestock, but some nomads still stay on the grasslands because they would like to graze their animals rather than relocate. These non-relocated nomads usually have a large number of livestock so they have decided to remain in their original places. This project is aimed at supporting the poorest nomads. The aim is not only to protect the grasslands but also to protect people's lives. Thus the nomads have to reduce their livestock as well as close off some of the grasslands that suffer from serious degeneration. Most relocated nomads just think of their children's future education; therefore, they relocate to the houses that the government provides. A fifty-year-old nomadic woman expressed, "I came here for my grandson because he needs to go to school and I want to see him get an education, so I and my husband relocated here after the government built these houses for us." But many relocated nomads complain of the poor quality of the houses, expressing that the bricks and cements break apart after only two years.

Mr. Du Fachun from the Institute of Ethnology and Anthropology remarks, "Ecological migration is carried out under the guidance of the government. The local government has responsibility to take care of eco-migrant living; eco-migrants have a great dependence on and high expectations of the government. According to the eco-migrant project, the government propaganda [emphasizes] the importance of the protecting the three rivers source area as well as to mobilizing eco-migrants so they benefit from relocation and preferential policies." The overall planning for the three rivers source area is under the guidance of the government and according to the government, famers and nomads are voluntary migrants, encouraging nomads to resettle in the towns, and to change their traditional nomadic way of life.

The local government builds a 45 square meter house for each relocated family; for each square meter, the government invests 800 RMB (US \$127). The government also provides one 120 square meter barn per family and invests 200 RMB (US \$32) per eco-migrant. The relocation subsidy is 400 RMB (US \$63) per person. In addition, a relocated eco-migrant receives a subsidy for 10 years.

Eco-Migrant Experiences with Relocation

According to interviewees, eco-migrants are not very satisfied with their relocation experiences.



In the beginning, these eco-migrants had high expectations for the compensation from the government but after they resettled to different areas, they encountered many problems. Economic, social, and cultural problems pushed these eco-migrants into a difficult situation. For example, farmers and nomads are relocated into the same villages. Both groups have differences in views, beliefs, customs, language and lifestyle so various conflicts between these two groups occur after they resettle together. Some migrant villagers from Yushu prefecture were relocated near Golmud city in Qinghai province. The researchers found that more than 300 eco-migrants are nomads that emigrated from Yushu prefecture; these nomads have lived in the same village with farmers for 6 years. Because of cultural conflicts, more than 50 families have divorced after they lived together and many children have no parents. The nomadic couples usually don't have marriage certificates so after they divorce, the woman can't get reasonable compensation. Most divorced mothers also take on more of the burden to take care of their children. Mr. Duoje expressed, "Women are victims after divorce because they are suffering from poverty. The government subsidy is 2000 RMB (US \$317) for one family per year. If a couple is divorced, most property belongs to the man but not the woman. Generally, both nomadic men and woman lack awareness of the law and the law doesn't work in their eyes, so the government needs to encourage people to understand the law and help them accept the law."



Resettlement area

Another reason these eco-migrants are economically poor is because they do not have a way to generate income now they have moved from the grasslands. After they moved nearby Golmud city, the government offered some training programs such as making prayer wheels, but these eco-migrants have no idea how to sell these products.

Mr. Du Fachun remarks, "There are two types of resettlement according to the government relocation policy. One is overall relocation, which means that all nomads are relocated together

from their original place to a place outside their local county. These nomads no longer return to the grasslands to raise animals, thus they must become permanent farmers. Their relocation compensation is 80,000 RMB (US \$12,700) per household for housing and a feed grain cash allowance of 8,000 yuan (US \$1,270) per household.

The second kind of resettlement is scattered resettlement within a county. Maduo County is one example. Nomads from its contracted pastures moved off the grasslands to the local county. The government offers a placement subsidy to these nomads to stop grazing animals for 10 years in order to restore the grasslands. They receive 40,000 RMB (US \$6,350) per household for housing and a feed grain cash subsidy of 6,000 RMB (US \$952). The subsidy duration is 10 years. After 10 years, the nomad can choose whether to stay in the county or go back to the pasturing area.

The overall relocation compensation is higher than the scattered relocation compensation, but they both have an economically and culturally large cost. For example, nomads were relocated 450 kilometers from Yellow River and Heihe townships to Hainan Tibetan Autonomous Prefecture in Tongde County. These relocated nomads are unfamiliar with their new environment and this accentuates the social and cultural differences between the eco-migrants and the local people. Additionally, the nomads from different prefectures speak different dialects, so it's difficult to understand each other.”

“We are very happy that the government offered houses to us. For me, I really want to cherish this house, thus I encouraged my family to relocate here. In the beginning, my wife was against my decision, but I tried to persuade her several times. She said, ‘It’s very difficult to change from one life to another.’ But for me, I never attended school, because I am a nomad and I inherited a traditional lifestyle where grazing animals in the grasslands was my whole life. But nowadays, I realize it’s very difficult to survive without education. I know it is okay for my generation to survive without education, because we don’t need to worry about food and shelter in our pasture area; everything we get we don’t need to pay money for. Through our livestock, we can produce milk, cheese, and yogurt by ourselves for eating and we have sufficient meat for the whole year. But [when] I considered my son’s future, I decided to come here and live in the government house. Everything here we need to buy with money, even fuel. We have no yak dung for fuel, so we have to buy coal instead. One bag of coal is 70 RMB; how can we afford that? Because my son needs to get an education, we sold all our livestock before we came here. Even though life is much more difficult here than we imagined, we are unable to go back to the grasslands, because we don’t have anymore. We will become useless people if we go back.”

- Tibetan Nomad

Some companies are still mining resources such as gold and copper in the protected grasslands but the local people have no right to stop the mining on their land. These mining companies violate the national grasslands law. Chapter 5 regarding grasslands use says, “[I]n areas where

grazing is prohibited or closed grazing or rotation grazing is practiced, the State gives grain or funds as subsidies to people to raise livestock in pens, and the specific measures in this respect shall be formulated by the State Council or the relevant department authorized by it.” Chapter 6, Article 46 for grasslands protection states, “Reclamation of grasslands is prohibited and famers or herdsmen who return reclaimed land to grasslands within the planed scope approved by the State Council shall be given subsidies in the form of grain or cash or will be given money to buy varieties of grass.” Article 49 states, “It is prohibited to collect or dig plants or engage in other activities to the detriment of grassland vegetation on desert or semi-desert grassland or on grasslands that suffer serious degeneration or salinization, or that are seriously encroached upon by sand or rock, or that suffer serious soil erosion, or on ecologically fragile grasslands.”

The actions of the mining companies are in clear violation of these laws.



A home in an eco-migrant village. The family tells the government that they live in this house, but actually none of their members live here. Eco-migrants aren't allowed to rent or sell the house to other people. This family didn't want to lose this house but at the same don't want to leave the grasslands so they tell government that they live in this house, but in fact, they are grazing animals in the grasslands.

Conclusion

According to this research, the government and eco-migrants have different views about grassland degradation and the relocation policy as well as compensation. Generally, the eco-migrant project is to prevent grassland degradation from the over-grazing of animals in the three rivers source area of Qinghai province, but relocation has caused many eco-migrants to become poorer and poorer in recent years. The main problem is there is not enough compensation or subsidies for eco-migrants, no strict policy for grasslands protection, and no prescribed timeline for giving compensation to eco-migrants.

Recommendations

For Eco-Migrants

Eco-migrants should make clear goals before resettlement occurs and understand the various policies before relocating. Eco-migrants must also enhance their awareness of national laws in order to protect their rights.

For the Chinese Government

The Chinese government should improve grassland laws in the three rivers headwaters area to ensure the protection of the grasslands. The government needs to secure the basic needs of eco-migrants; these basic needs include creating widespread training programs for eco-migrants. The Chinese government must also understand the different cultural backgrounds of eco-migrants and choose appropriate relocation areas for eco-migrants.

The Inadequacies of Chinese Overseas Investment Regulations

A Case Study of the Myitsone Dam, Burma

by Zuo Tao

Zuo Tao is a program officer for Save the Children China Program, where she works on Community Participation in Education, Nutrition, and Hygiene, Teacher Training, and Early Childhood Care and Development in rural communities throughout Yunnan province.

Summary

Benefiting from the ‘Go Global’ policy, China is boasting economic development, and its overall strengthened capacity in competition with international companies. However, it is consistently criticized by domestic and international civil society for its lack of standards and unendorsed domestic legislations on environmental and human rights protections in its overseas investment. Those host countries’ diversity and fragile ecosystems turn out to be victims of exploitation for the extraction of natural resources. In addition, seeking business opportunities in conflict-torn or military-ruled countries are accompanied by myriad economic, social, political, and cultural impacts and cause political risks and degrade the nation’s image.

The construction of the Myitsone Dam, as a typical Chinese overseas investment project, raised important questions from Burmese civil society as well as pressure from the international media and NGOs in terms of its potential negative impacts on the watershed ecosystem and local people’s livelihoods. Demonstrations and protests took place inside Burma (Myanmar), despite the high risk of reprimand from the centralized authoritarian government, and all around the world. Thein Sein, the first president in the country’s transition from dictatorial regime to democracy, surprisingly announced the suspension of the Myitsone Dam project on 30th September (ironically one day prior to the Chinese National Day), attracting attention worldwide.

Despite the wide range of assumptions around the dam’s suspension, this report mainly focuses on analyzing the inadequacy of China’s overseas investment policy and practices concerning environmental and human rights protections in host countries. Through this research, practical recommendations will be provided to strengthen these regulations and their implementation. In addition, this report aims to encourage Chinese overseas investors to comply with internationally accepted standards so as to improve China’s image as a responsible country that contributes to world economic development and the universal welfare of human beings.

Background

Since the 1990's, the Chinese central government has pursued a Go Global strategy to encourage companies to launch more businesses and invest in overseas markets. Consequently, numerous Chinese companies, especially those owned by the state, have expended their scale in the outside world with a special focus on countries in Southeast Asia and Africa. This expansion was primarily aimed at solving China's increasing domestic energy demands in order to continue functioning as the world's factory. As China became one of the top five investors in overseas markets, it drew more attention from the international community not only because of its high speed economic boom, but also because of the lack of environmental and human rights protections.

As one of Burma's key geographical neighboring countries (sharing a stable boundary of 2185 kilometers), the Chinese government consistently supported efforts to build a good relationship between the two countries and won huge profitable business opportunities, especially in the area of natural resource extraction. As the biggest investor in Burma, with a total amount of 12.3 billion US dollars in 2010, the Chinese government provided Burma with economic support at a time when many Western countries still placed sanctions on Burma following the suppression of the student movement in 1988 by the military government. However, Chinese investment didn't always benefit Burma's people. Most hydropower dams followed a Build Operate Transfer model, so the Burmese government will take over these "money generators" only after 30 or 50 years. In the meantime, most parts of Burma's rural areas will continue to remain in the dark.

In Kachin State, in the Northern part of Burma, seven cascade dams are being planned or constructed by Chinese companies, including Myitsone, the first dam on Burma's lifeline, the Irrawaddy River. The Myitsone Dam site is located 3.2 kilometers below the confluence of the Mali River and the N'Mai River. It is about 42 km north of Myitkyina, the capital city of Kachin State and 200 km from Teng Chong city of Bao Shan prefecture, Yunnan province of China.

Background of Myitsone Dam

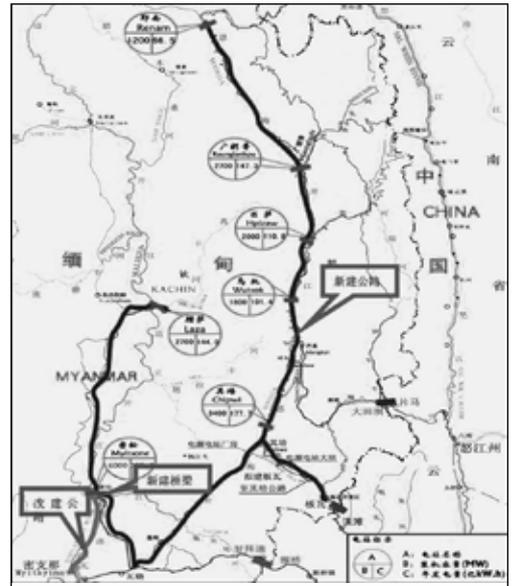
The China Power Investment (CPI) Corporation, a nationally owned hydropower corporation, is the Project Manager of the "Confluence Region Hydropower Projects" under the agreement with the Myanmar Ministry of Electric Power No. 1. In December 2006, two parties signed a Memorandum of Understanding (MOU) for a 4,100 Megawatt project at Myitsone for approximately US\$3.6 billion.¹ Several Chinese companies have been involved in the preparation, construction and financing of the project. China Gezhouba Group Corporation has engineering construction contracts at the Myitsone and Chibwe Nge dam sites. Asia World Company, which has been discredited due to its performance in the past, is another key player in facilitating the project resettlement and building preparatory infrastructure at the Myitsone Dam site. 90% of electricity generated will be sent back to the China Southern Power Grid via its subsidiary, the Yunnan Power Grid Company. This will aid the power-hungry eastern coastal areas of China,

1) "Myitsone Dam." Wikipedia. 15 August 2011. Wikipedia Foundation. Inc. 21/08/2011. <http://en.wikipedia.org/wiki/Myitsone_Dam>

conforming with the Chinese central Government's 'West to East Transmission Policy'.²

Problem Statement

The Myitsone dam project was designed to achieve a win-win situation for both countries' interests. However, the project neglected local people's voices and faced opposition by the Kachin people and NGOs that represent affected communities, because of its destruction of the ecosystem of the Irrawaddy River and the fact that it compromises local people's rights to effective public participation. The potential impacts of the project are: 1) a potential change in the water flow which may directly impact the downstream delta where sixty percent of Burma's rice is produced, therefore threatening food security in Burma; 2) flooding an area of 766 square kilometers (the same size as Singapore), including one of the world's eight 'hottest hotspots of biodiversity,' the Mizoram-Manipur-Kachin rainforest region; 3) the extinction of some rare flora and fauna, including the endangered Irrawaddy dolphins; 4) the destruction of the center of Kachin culture; 5) changes to the river-related culture of the Burmese people; 6) forced relocation of 3,000 local ethnic dwellers to a less productive place with an insufficient food supply and unreasonable compensation without the Free Prior Informed Consent (FPIC) of the affected community; 7) potential flooding threats to millions of people living downstream in capital city of Kachin State, Myikyina, which may be caused by an earthquake along the Sagaing Fault line 100 kilometers from the dam site; and 8) exacerbation of the civil war between the Burmese government and Kachin Independent Army, causing 40,000 people to lose their homes.



Map of Myitsone Cascade Dams

Source: China Power Investment (CPI) website

Chronology of the Myitsone Dam project

Protests against the dam construction began in 2007 when the media released the news that the project MOU was signed between the two countries:

- » In May 2007, twelve respected elders and leaders from townships across Kachin State sent an objection letter to Senior General Than Shwe requesting that the project be cancelled.³
- » On Feb. 5th 2010, Kachin ethnic demonstrators worldwide gathered in front of Burma's embassies in Bangkok, London, New Delhi, Singapore and Wellington to express their opposition to the project. They also sent letters to the embassies of the People's Republic of

2) "Myitsone Dam." Wikipedia. 15 August 2011. Wikipedia Foundation. Inc. 21/08/2011. <http://en.wikipedia.org/wiki/Kachin_State >

3) "A letter to Mr. Zhao Jianguo, Chief Executive Officer, China Southern Power Grid Ltd." International Rivers. Aug. 21, 2011. <<http://www.internationalrivers.org/files/China%20Southern%20Grid%20Letter%20-%20English.pdf>>

China's to appeal to premier Wen Jiabao to halt the dam construction work.

- » On April 17, 2010, a series of at least 10 separate bombs exploded at the Myitsone Dam construction site. At least one Chinese worker was injured and several temporary buildings and vehicles were destroyed.
- » In March 2011, the Kachin Independence Organization (KIO) wrote to the Chinese government warning that civil war could break out if construction of the Myitsone Dam proceeded,⁴ since "repeated appeals from various sectors of society to halt the Myitsone Dam have been ignored."⁵
- » In June 2011, the 17-year cease fire between the Burmese Army and the KIA was broken. Sparked by the appearance of the Burmese Army in the KIA-controlled area of the Taping Dam site, which is being constructed by another Chinese hydropower company, the Datang Corporation, added to the instability in the region. To date, there are still 10,000 refugees trapped in the Burmese government-controlled area and 30,000 others being kept under KIA control.⁶
- » On 11 August 2011, an open letter sent by Burmese pro-democracy leader Aung San Suu Kyi urged the governments of China and Burma to reassess the project in light of its serious environmental and social consequences.⁷
- » On 17 September 2011, the Burmese government hosted a workshop in Naypyidaw to discuss the potential impact of hydropower projects on the Irrawaddy River, with ministers, NGOs and Chinese investment interests represented. Splits widened between government officials. Burma's industrial development committee chairman proposed a more detailed study of the potential impact of the dam.⁸
- » On 20 September 2011, an art exhibition held in Rangoon to promote a public campaign to save the Irrawaddy River attracted about 1,000 people including well-known writers, actors, politicians, environmentalists and pro-democracy leader Aung San Suu Kyi.⁹
- » On 30 September 2011, media all around the world reported the news that the Burmese president had announced the suspension of the Myitsone Dam.

With the halt of the Myitsone Dam project, fierce discussions around the world arose to

4) "Stop damming in War-Zones on Burma's Major Rivers: A Briefer on Conflicts at Dam Sites in Burma by Burma Rivers Network" Burma Campaign UK. June 15, 2011. Burma Campaign UK. 21/08/2011. <<http://www.burmacampaign.org.uk/index.php/news-and-reports/news-stories/hydropower-dams-fuelling-conflict-in-burma/16>>

5) "Hydropower Dams Fuelling Conflict in Burma", Burma Campaign UK June 15, 2011. Burma Campaign UK 21/08/2011.

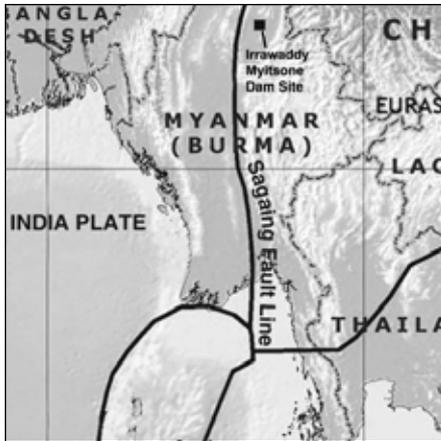
6) Matthew Smith. Personal interview. 21/09/2011

7) Aung San Suu Kyi. "Irrawaddy Appeal." 11/08/2011 <http://www.irrawaddy.org/article.php?art_id=21880>

8) Wai Moe. "Myitsone Controversy Sparks Discord in Naypyidaw" The Irrawaddy. 19/09/2011. <http://www.irrawaddy.org/article.php?art_id=22103>

9) Sai Zom Hseng. "Suu Kyi Attends 'Save the Irrawaddy' Art Event" The Irrawaddy. 22/9/2011 <http://www.irrawaddy.org/article.php?art_id=22124>

address the impacts of this heavy explosion on the bilateral relationship between China and Burma. A spokesperson from the Ministry of Foreign Affairs of China and a representative from CPI both expressed their dissatisfaction and confusion on this issue. Followed by the US Secretary of State Hillary Clinton's visit to Burma on 30th November 2011, the Western world showed great support for the decision to stop the project, and saw it as the sign of the new government's commitment to democratic reform¹⁰. At the same time, calls from within China from domestic academics, NGOs, and civil society urgently demanded a review of diplomatic principles and potential rules for overseas Chinese investment practices.



Sagaing Fault Line in an earthquake-prone area

Source: Burma Rivers Network

Introduction

In this research paper, I will analyze the root causes of the suspension of the Myitsone Dam project, with special focus on the lack of public participation, transparency, and access to information surrounding the project. I hope to raise public awareness of these issues and promote meaningful and effective public participation in future Chinese investment. Additionally, I will review the legal obligations of companies to adhere to international standards in conducting Environmental Impact Assessments (EIAs) and Social Impact Assessments (SIAs), as well as other international laws and treaties, and encourage the Chinese government to monitor these processes with the participation of civil society.

Based on this research, I will make practical recommendations to different stakeholders on the Chinese side, including the government, private companies, and civil society in the hopes of improving performance in future overseas investment and thus promoting a responsible image of China overseas as contributing to the ultimate development goals of human beings.

Findings and Analysis

Inadequacy of Public Participation

"The biggest problem is that the (Myitsone) Dam project has no public participation and lacks transparency."

- Anna, Burma Rivers Network (BRN)

10) Kyaw San Wai. "Myanmar's Strategic 'Realignment'". 17/11/2011 <http://www.rsis.edu.sg/publications/Perspective/RSIS1702011.pdf?utm_source=getresponse&utm_medium=email&utm_campaign=rsis_publications&utm_content=RSIS+Commentary+170%2F2011+Myanmar%E2%80%99s+Strategic+%E2%80%98Realignment%E2%80%99+by+Kyaw+San+Wai>

Public participation is neither a voluntary working approach nor a decoration process of the implementation of development projects. Both national and international regulations make public participation a fundamental requirement. Public participation is not a new concept for Chinese people. Not only in the ideology of communist-based social structure of the nation, but also in the government administrative working approach in recent years, public participation is considered an essential requirement to represent people's wills and opinions. As Yale Law School published in its website about public participation in China— through public hearings and open meetings, publication of draft laws, rules and policies for public comment and other means – it is now increasingly recognized to be an important mechanism for gathering the information and expertise on which rational regulation is based and for gaining public acceptance of and compliance with new laws and regulatory decisions.¹¹

Moreover, according to relevant regulations and international standards, such as those of the World Bank and the Asian Development Bank (ADB), it is required that an Environmental Impact Assessment (EIA) and a Social Impact Assessment (SIA) be conducted with full public participation. Meaningful participation must be ensured, both in terms of quantity and quality.

In terms of quantity, public participation requires a survey or assessment concerning people's opinions about large scale projects which may cause impacts or great changes in people's lives and the environment. The project team should gather concerns and opinions from directly affected communities, potentially affected communities, people from different organizations that may be interested or concerned, and other civil society groups.

However, in the Myitsone Dam case, CPI published on its website “We launched more than 300 copies of EIA questionnaires to get opinions from different groups, including government officials, directly or indirectly impacted people, intellectuals, environmental experts, and representatives of different religious and ethnic groups. Only 18% of people oppose the dam.”¹² This statistic received criticism because it was based on a limited and inadequate sample size and failed to disclose the identities of the people who opposed the project. First and foremost, questionnaires should be given out to potentially affected community members in adherence to international customs. According to an unofficially released copy of the EIA report, which was fully funded by the China Power Investment Corporation (CPI) and conducted by Changjiang Institute of Surveying, Planning, Design, and Research (CISPDR) of China with experts from Biodiversity and Nature Conservation Association (BNCA), “The majority people of local races oppose construction of the dams, especially the Myitsone hydropower project.”¹³

In terms of quality, effective participation should include all the people's voices, representing both positive and negative feedback regarding the project. Their opinions should be taken into account so as to improve the project design or adapt the plan for the sake of people's welfare. But the company didn't thoroughly consider the local people's opposition to the project and their opinions. Instead, they insisted on carrying out construction work on the project and published

11) Public Participation in China. Yale Law School. 28/11/2011. <<http://www.law.yale.edu/intellectuallife/publicparticipation.htm>>

12) “Highly responsible to the EIA work” from CPI website

13) “Environmental Impact Study on Hydropower Development of Irrawaddy River: An Analysis from Burma Rivers Network.” Burma Rivers Network. 16, July, 2011. <www.burmariversnetwork.org>

a polished EIA report without a complete review of both environmental impacts and potential social instability.

Harmful Consequences of a Lack of Public Participation

The EIA of the Myitsone Dam states, “Information should be disclosed to the public about the hydropower dams and resettlement programs through public meetings.”¹⁴ Actually, evidence shows that five villages have already been forced to be resettle without proper advance notification, let alone compensation from the company.

Villagers from Mali N’Mai Zup village (also called Myitsone village), the first relocated village, were warned that they were to leave their homes within one day. Kyi Phyo, a researcher on the Myitsone Dam case was told by a local villager that, “Villagers were chased like animals by the Burmese Army, and sent onto the Asia World company’s truck.”¹⁵ CPI showed on its website how the project helped local people to have better living conditions, explaining that the people were moved “from primarily grass houses to two-storey wooden houses...”¹⁶ Even though the resettlement houses looked much better than their original ones, they were not designed according to the users’ needs. As a researcher wrote in her report on the Myitsone Dam, a resettlement field survey revealed that “the new premises provided in the resettlement areas are so small that a barn or a stable or a pig-hut or a poultry coop cannot be built for family use. They cannot live like inhabitants of towns. The loss of their traditional life style makes these villagers feel unhappy and unsatisfied.” Thus, without enough farmland and natural resources as before, and lack of technical skills for earning a living, resettled villagers can only wait for rice from the government each month.¹⁷ Local people are still constrained in their resettlement place even after the suspension of the dam. This had raised great resentment towards the Chinese company for its investment and so-called development that has made people suffer instead of benefiting from the project.

Despite potential destructive impacts on the local ecosystem, the most criticism has been focused on the company’s lack of transparency and public participation. So, the entire civil society unified, from farmers to National League for Democracy (NLD) leader Aung San Su Kyi, from community-based organizations to international NGOs, from illiterate people to academics, from both inside and outside Burma, against the dam project. The Burmese government also officially showed its concern by citing the people’s will as the reason for the dam suspension, which diverted people’s dissatisfaction from their own government to the Chinese government. This action was like an alarm to warn the Chinese government about their overseas investment practices. It embodies the expectations of international civil society, which is urging Chinese companies to fulfill their responsibility to protect the human rights of local communities by respecting and listening to people under legal criteria and monitoring by the Chinese government.

14) “Environmental Impact Study on Hydropower Development of Irrawaddy River: An Analysis from Burma Rivers Network.” Burma Rivers Network. 16, July, 2011. <www.burmariversnetwork.org>

15) Kyi Phyo. Personal interview. 14/12/2011

16) Jiang Lizhe. “Build up Beautiful New Homeland for Dam Resettlement People.” www.cpiyn.com. 06/09/2011. <<http://www.cpiyn.com.cn/Liems/site/zere/zereNews.jsp?nid=6825>>

17) Phyu. “Resettlement In The Wake of Myitsone Hydropower Development Project In Kachin State, Myanmar.” 2010 Mekong school field research report

Underlying Reasons for the Lack of Public Participation

Firstly, an economic-oriented development concept leads to inefficient assessment of the potential social, environmental, political, and cultural impacts of a project, which will add an accumulating unpredictable price in the long term. The ultimate goal of development should be human being's overall welfare and freedom without compromising future generations' basic needs or paying high environmental costs. In reality, profit is still the main goal of the company. However, as state owned companies, besides making a profit, they should also take full responsibility of respecting local culture, society, and other aspects related to people's opinions in the host country to improve China's image in overseas investments. Considering the losses to Kachin culture, the local ecosystem, and millions of people's livelihoods, the decision made by Burma's president will gain people's votes. Chinese companies should learn from this lesson, and perform better in the future to restore the reputation of the company as well as the nation.

Secondly, a centralized ideology and top-down working approach limited the possibility of effective participation. Chinese companies always hold the idea of gaining "win-win" results through their investments. But the question is, who is the winner, and what are the benefits? In China, public participation is ideally implemented by representatives of people who are mainly from people's councils and other government departments at various levels. The effectiveness may vary according to the representatives' coverage and the interest groups they represent. In fact, however, a "win-win" relationship is created by companies working with local authorities, who are expected to represent local people's benefits. So as long as these requirements are met, people are assumed to benefit as well. Even if there is dissatisfaction raised by affected communities, these representatives will work very efficiently to help the company to handle the problem and to make the project smoothly move forward. Obviously, selection of the representative of the local people is crucial for the company to carry out a project. As an unspoken rule, it's always effective and worthy to develop a good relationship with the host country's different levels of government when implementing a construction project overseas instead of communicating directly with affected people. Consequently, effectiveness of public participation in practice may vary from case to case. However, it is ultimately up to the people in power to represent those affected people. This is also illustrated in the Myitsone case.

"The Chinese government thinks that if they have agreement with the central government, then everything will be OK. But it's not the case!"

-Yaw Na, Kachin Environment Organization

No doubt the Burmese government as a business partner will guarantee the Chinese company's security. In the past, this has been done by chasing local people away and taking their land, property, and even lives by force. The Chinese company may also turn a blind eye to the people's suffering from losing their land, their homes, even their freedom. However, influenced by the worldwide democracy movement, people from dictatorial countries are encouraged by increasingly successful attempts to change the power structure. The Burmese government has noticed this, and reacted when Libya was preparing for its new election after the civil war. Now the question left

for the Chinese government and companies is how they should respond sincerely to respect and protect human rights and the environment as they promised.

Lack of Transparency and Access to Information

The reality discovered by different NGOs was that the affected communities were not notified by either of the contract parties to have Free Prior Informed Consent (FPIC) about the project. And they didn't get any resettlement and compensation information. It is difficult for the public to access information. Only limited information is available on CPI's website. In addition, it is really difficult for the public to access information through a formal approach. For example, the company officially refused to have any interviews or share information when I tried to making an appointment to interview relevant staff.

Moreover, CPI kept the lending bank information and funding sources confidential. In addition to CPI's own financial information, not enough information was released to the public about which bank was financially supporting the dam project. This is a drawback to the implementation of green bank policy. In July 2007, the former Chinese State Environmental Protection Administration (SEPA) associated with the China Banking Regulatory Commission (CBRC) released the Implementing Environmental Policies and Regulations on Guard against Credit Risks Opinion to minimize the possibility of granting loans to improper and illegal corporations and projects because of concern for environmental protection, thus limiting the expansion of the high energy and high pollution businesses. This requires that for those projects which failed to pass the EIA approval process or the required environmental facilities inspection, banks cannot give any kind of credit loan.¹⁸ Currently, it is an extension of the domestic green lending policy, whose implementation generally complies with the laws and regulations of the host country, the international conventions signed by the Chinese government, as well as China's own laws.¹⁹ According to this green banking policy, nine domestic NGOs, including Green Watershed and Friends of Nature, have already set up monitoring mechanisms to encourage banks to load to companies that adhere to environmental protect laws and regulations. The ranking and monitoring results are published annually to promote public monitoring and awareness, and to improve the banks' practices on environmental protection. However, without adequate access to information, this policy cannot be implemented according to its original purpose.

Inadequate Laws and Regulations

Limitations of EIA law

One of the international accepted environmental protection methods in large scale project implementation is to conduct an EIA prior to the main construction stage. The EIA is supposed

18) Wang Yuang. "What is Green Banking? What are the policies of Green Banking?" CCTV.com. 07/09/2011 <<http://hb.cctv.com/20110907/108104.shtml>>

19) Page 60. Global Environmental Institute. "Environmental Policies on China's Investment Overseas." China Environmental Science Press. May, 2011.

to provide appropriate opportunities to inform and involve stakeholders in a project.²⁰

The law of the People's Republic of China (PRC) on EIAs entered into force on September 1, 2003. Mou Guangfeng, the sponsor, promoter of EIA law and an EIA inspector from the Ministry of Environmental Protection reviewed the EIA law and mentioned that a complete Strategic Environment Assessment should include a policy assessment, planning assessment, and project assessment. In China, only a planning assessment and a project assessment is required under EIA law. The part that is missing- the policy assessment- is arguably the most important part. So despite a project's environmental impacts, the strategic development policy is set without input from environmental departments, and the other two assessments can then only be done superficially. Furthermore, only at the project assessment stage can a project be vetoed, which means that even if the EIA is done well, it is still hard to change a poorly conceived plan for economic development.²¹

"China has a reasonably sound EIA regulatory framework for governing the environmental conduct of Chinese companies compared to other countries in the Mekong Region," commented by Richard Frankel, a professor of from the Asian Institute of Technology (AIT) in Thailand. However, he also mentioned the weakness of the current situation: "the EIA, in reality, was conducted late in the project planning process, either by the development ministry or the company. It should have started at the same time as the feasibility study." One of the Chinese Hydropower company senior staff members revealed that they were concerned about how implement the hydropower energy plan that was assigned as their company's work plan under the national energy strategic plan. Their economic development pressure is rather high. Take a 20,000 megawatts hydropower project for example; it can produce 500,000 RMB per hour. If it generates 20 hours per day, it can produce 10,000,000 RMB in one day. When they get a loan from a lending bank, they have to pay interest on the loan, so they have to make sure that each day's work is on schedule. Otherwise, they have to pay for the damage not only derived from the delay of the work, but also if they miss the completion time due to the rainy season, they have to wait for the next year's dry season to bring the project work up to the next stage.²²

Furthermore, the fine for breaking the EIA law is only 200,000 RMB maximum, "so some corporations prefer to break the law rather than paying the high costs of obeying the law." said environmental protection lawyer, Zhang Jingjing. "The EIA law is more like a 'toothless tiger' in China. The lack of independence China's judicial structure causes the law to be influenced by the government administration's decisions."²³

20) Page 19. The Burma Environmental Working Group. "Burma's Environment: People, Problems, Policies." June, 2011

21) Feng Jie. "SEIA should be Included in EIA Law." Southern Weekend. 01/09/2011. <<http://www.infzm.com/content/62745>>

22) Anonymous. Personal interview. 27/10/2011.

23) Zhang Jingjing. Deputy Director of Public Interests Laws Research Institution, China Programme. Personal interview. 29/09/2011.

Violations of the EIA Law

The Global Environmental Institution suggested that when operating in a country or region without EIA laws or effective environmental laws, Chinese companies should still conduct EIAs in accordance with relevant international treaties and China's own EIA requirements. This will enable them to assess a project's environmental impact and draw up mitigation plans, which the companies can then submit to the local authorities for review.²⁴ Thus, the EIA conducted by the third party for the Myitsone dam is in coherence with Chinese government requirements. However, the implementation process is inefficient in practice according to Chinese EIA law.

Article 25 of China's EIA law states: "Construction project of the environmental impact assessment documents without permission from the valid department for examination or not approved after examination, cannot be approved to be constructed by the project examination and approval departments, and shall not start construction work."²⁵

However, in the case of the Myitsone Dam instead of adjusting the project plan, both parties insisted on pushing forward with the construction work.

"Eco regions which are nationally important, regionally significant and globally outstanding will be directly affected by clearing and logging of the inundation areas and construction activities for a series of dams in Kachin State...Of particular concern is the loss and fragmentation of key ecosystems and the loss of key, endemic and endangered species of both flora and fauna..."²⁶

-BRN Review

Nevertheless, in August of 2011, Burma News International, a Burmese Media group, documented on its website, "rampant logging is happening around the Myitsone Dam site on the Irrawaddy River, 27 miles north of Myitkyina. It is being carried out by the Burmese Asia World Company, the construction contractor, and a pro-government militia group led by Lasang Awng Wa."²⁷ "And the availability of traditional medicinal plants also face great threats."²⁸ Even the unofficially disclosed original 945-page preliminary biological assessment of seven planned dams on the Irrawaddy, with aseline information on the biodiversity of flora and fauna collected from the catchment area of the dams over a period of 5 months from January to May 2009, also mentioned that a harmful impact on the environment was expected, "There will be severe negative

24) Page 86 &89. Global Environmental Institute. "Environmental Policies on China's Investment Overseas." China Environmental Science Press. May, 2011.

25) The State Concl. "Environmental Impact Assessment Law of PRC". 29/10/2002. www.people.com. 29/10/2011 <<http://www.people.com.cn/GB/shehui/212/3572/3574/20021029/853043.html>>

26) "Environmental Impact Study on Hydropower Development of Irrawaddy River: An Analysis from Burma Rivers Network." Burma Rivers Network. 16, July, 2011. <www.burmariversnetwork.org>

27) "Extensive logging in Northern Burma by China." Burma news international. 23 APRIL 2011 Kachin News Group. 21/08/2011. <<http://www.bnionline.net/news/kng/10600-extensive-logging-in-northern-burma-by-china.html>>

28) "Environmental Impact Study on Hydropower Development of Irrawaddy River: An Analysis from Burma Rivers Network." Burma Rivers Network. 16, July, 2011. <www.burmariversnetwork.org>

impacts on three regionally significant and globally outstanding eco regions, on a center of world plant diversity; severe impacts on key biodiversity areas and conservation corridors of Myanmar”²⁹ Though the crucial EIA report listed many risks and potential damages from the construction of the Mytisone Dam that “If Myanmar and Chinese are really concerned about environmental issues and aim for sustainable development of the country, there is no need for such a big dam to be constructed at the confluence of the Ayeyawady River.”³⁰

EIA law Article 4 states: “An EIA should be an objective, open, fair, and comprehensive consideration of the impacts on the environment and ecological system that may caused by planning or implementation of a construction project, and must provide a scientific basis for decision-making.”³¹

EIA law Article 5 states: “The state encourages relevant units, experts and the public to participate in the EIA process.”³²

In addition to insufficient public participation, the company restricted public access to information. Since the EIA report must inform affected people and all stakeholders of the potential negative impacts caused by the development project, local communities should definitely be involved and have access to information regarding the project. The Burma River Network analyzed the EIA report and found that “Consultation with affected peoples was not conducted.”³³ As mentioned in previous section, the EIA was conducted without effective participation by local affected communities, and it was kept confidential between the Chinese company and the Burmese government.

Missing Social Impact Assessment (SIA)

“Construction on the Mytisone Dam should start only after the SIA is done!”

- Dr. Yu Xiaogang, the director of Green Watershed

The Importance of Conducting an SIA

A social impact assessment can be defined as the process of assessing or estimating, in advance, the social consequences that are likely to follow from specific policy actions or development

29) “Environmental Impact Study on Hydropower Development of Irrawaddy River: An Analysis from Burma Rivers Network.” Burma Rivers Network. 16, July, 2011. <www.burmariversnetwork.org>

30) “Environmental Impact Study on Hydropower Development of Irrawaddy River: An Analysis from Burma Rivers Network.” Burma Rivers Network. 16, July, 2011. <www.burmariversnetwork.org>

31) The State Concl. “Environmental Impact Assessment Law of PRC”. 29/10/2002. [www.people.com. 29/10/2011 <http://www.people.com.cn/GB/shehui/212/3572/3574/20021029/853043.html>](http://www.people.com.cn/GB/shehui/212/3572/3574/20021029/853043.html)

32) The State Concl. “Environmental Impact Assessment Law of PRC”. 29/10/2002. [www.people.com. 29/10/2011 <http://www.people.com.cn/GB/shehui/212/3572/3574/20021029/853043.html>](http://www.people.com.cn/GB/shehui/212/3572/3574/20021029/853043.html)

33) “Environmental Impact Study on Hydropower Development of Irrawaddy River: An Analysis from Burma Rivers Network.” Burma Rivers Network. 16, July, 2011. <www.burmariversnetwork.org>

projects, particularly in the context of appropriate national, state, or provincial environmental policy legislation. Social impacts include all social and cultural consequences to human populations of any public or private actions that alter the ways in which people live, work, play, relate to one another, organize to meet their needs, and generally cope as members of society.³⁴

The World Bank and Asia Development Bank (ADB) have included the SIA as a required criterion before granting a loan. In China, the former State Planning Commission announced Guidelines for Investment Project Feasibility Studies that suggest including a SIA in the large scale investment project feasibility study. "However, because the law doesn't require any government bodies nor companies to comply, implementation is weak, and you hardly see it effectively enacted," indicated Si Guoqing, the vice team leader of ADB China SIA Capacity Building Specialist Team. He also mentioned that the World Bank has chosen 50 large scale investment projects for research comparing economic yields between the predicted in the feasibility stage and the real practice situation. And, surprisingly, those projects for which an SIA had been conducted were close to or over the predicted economic yield ratio of about 85%, but those projects for which an SIA was not conducted had a much lower than predicted economic yield.³⁵

Problems Caused by the Missing SIA in the Myitsone Dam Case

The lack of a SIA in a conflict area caused many social, cultural, and political problems which contributed to the failure of Myitsone Dam project. As the Irrawaddy River is regarded as the mother river to the Burmese as Yellow River to the Chinese, it is not only important for food security, but is also considered the cradle of Kachin culture and has great influence on Burmese culture. Millions of people depend on the river for their livelihood, transportation, and cultural ceremonies.

*"It's an unfair dam project. There is no real participation from the local people. The electricity generated will be sent to China and the money will go to the Burmese army; however, all the negative impacts will be endured by local people."*³⁶

- Burma Rivers Network staff member

The lack of an SIA could lead to a failure to estimate political risks in the project implementation, creating instability which directly influenced investment and caused deterioration in the Sino-Burma people's relationship. Dr. Yu of Green Watershed showed his great concern about the negative impacts of the missing SIA in the Myitsone Dam project. "When investing in conflict areas, it is essential and crucial to have a comprehensive risk assessment. Investing in ethnically sensitive areas may cause instability for businesses and even loss of the entire investment, such

34) Rabel J. Burdige and Frank Vanclay. Page 59 of "Environmental and Social Impact Assessment" published by John Wiley and Sons (UK). 1995

35) Cheng Gang. "Experts Suggest to Enact 'Social Impact Assessment' ". 26/11/2011. news.sohu.com. 31/10/2011 <<http://news.sohu.com/20041126/n223186957.shtml>>

36) Ahana. personal interview. Burma River Network. 26/08/2011.

as in Libya.”³⁷ He highlighted the importance of political impact assessment when planning development projects in high risk ethnic conflict areas.³⁸

The dam site belongs to the Burmese government, but the reservoir will flood the territory of the Kachin autonomous region which has a long history of conflict between the Kachin Independence Organization (KIO) and the Burmese Army. The fighting between the Burmese government army and the Kachin Independent Army (KIA) renewed on June 9, 2011, ending a 17-year cease-fire. The increasing tension between the two armies are considered a threat to Chinese border security. According to a New York Times report, “Intensifying clashes between ethnic rebels and Myanmar’s army have forced tens of thousands of villagers into refugee camps near the Chinese border, according to aid workers and members of the clergy.”³⁹

Furthermore, large-scale development projects in Burma, are frequently followed by severe military action and result in harassment of local people, including extortion, forced relocation, and forced labor. The Myitsone Dam is not an exception. After one month of photography and documentary work in the war zone area around the Myitsone Dam, one international NGO staff said that, “related to the project construction, there are some cases of forced relocation, land confiscation, and rape committed by the Burmese Army.” And it was also said that the Burmese’s Army opened fires on the civilians when they wanted them to leave the conflict area.”⁴⁰

The Myitsone Dam project evoked great dissatisfaction among Burmese people. However, it didn’t raise the concern of the Chinese government when they received a petition from a Burmese civil society group to halt the project. As a result, resentment towards the Chinese government increased as they showed indifference to people’s suffering. “People don’t want Chinese investments anymore inside Burma, especially in ethnic areas where human rights violations have occurred very often committed by the military of Burma”, added Zawn Lwan, a Kachin activist inside Burma.

Failure to Uphold the UN Global Compact

Since the CPI Company has already joined the UN Global Compact, it should practice the ten principles in the areas of human rights, labour, the environment and anti-corruption that the Compact upholds. The UN Global Compact requires companies to embrace, support and enact, within their sphere of influence, a set of core values in these areas. However, it was discovered that there are violations on the following principles:

- » Human rights Principle 1 & 2: Businesses should support and respect the protection of internationally proclaimed human rights and make sure that they are not complicit in human rights abuses; and Labour Principle 4: the elimination of all forms of forced and compulsory labour. As mentioned above, human rights abuses, such as forced resettlement, forced labor, abuse of property rights, land confiscation, rape, and killing are still happening

37) Yu Xiaogang. “Internal Trip Report on Burma Study Tour” 06/2011. Green Watershed.

38) Yu Xiaogang. Personal interview. 31/08/2011. Green Watershed.

39) “Villagers Become Refugees in Myanmar as Rebels Clash With Troops.” The New York Times. December 6, 2011. <<http://www.nytimes.com/2011/12/07/world/asia/as-myanmar-reaches-out-old-conflict-flares-with-kachin-ethnic-rebels.html>>

40) Matthew Smith. Personal interview. 21/09/2011

in the conflict situations inside of Burma.⁴¹ Ah Nan, a Burma Rivers Network official, stated that residents of five villages were forced to sign a resettlement agreement and forced to move to a relocation camp where they cannot go out because there are many soldiers and guardians. In these areas there are few health care services and not enough doctors, so malaria and diarrhea are very common. Since there is no land for people to farm, they can only wait for one bag of rice each month. And the government also refuses to let NGOs and the UN come to help.⁴²

- » Environmental Principle 7: Businesses should support a precautionary approach to environmental challenges; Principle 8: undertake initiatives to promote greater environmental responsibility; and Principle 9: encourage the development and diffusion of environmentally friendly technologies. If the Myitsone Dam is built, the diversified ecosystem of the Irrawaddy will face irreversible damage. The Chinese company's reputation will be degraded and the Chinese government will also be blamed for its negative impacts.

Conclusions

Hydropower, considered to be clean energy in China, is now being questioned for its destructive environmental impacts including deforestation, release of gas to accelerate global warming, and most importantly the negative changes to millions of people's lives that are dependent on rivers. According to my analysis, it can be concluded that the suspension of the construction of the Myitsone Dam in the Irrawaddy River is a typical demonstration of China's unsuccessful overseas investment planning as a result of the negative impacts economically, socially and politically. Not only were millions of US dollars of investment lost in the Myitsone Dam construction, more importantly, the halt of the dam project challenged the relationship between the two brother countries, discredits China's overseas image, and even caused anti-Chinese sentiment in Burma. All these losses can not be calculated in money.

Chinese companies should work on solving development problems and embracing a future energy model based on sustainable development so as to show their responsibility for the nation and the world. The failure to ensure people's participation gives Chinese companies a lesson to learn and illustrates the inadequacy of Chinese overseas investment practices and regulations. This can serve as a vivid example for China to reflect on and adjust in the future. The suspension of the dam could also be a turning point for both the Chinese government and Chinese companies to adjust their business regulations and improve their investment standards to prove the powerful country's responsibility, and to set up a practical sustainable development model for the rest of the world.

41) Matthew Smith. Personal interview. 21/09/2011

42) Ahana. personal interview. Burma River Network. 26/08/2011.

Recommendations

For the Company

- » Adhere to all regulations and laws related to Chinese overseas investment, especially the EIA law.
- » Conduct an SIA and HIA before the feasibility study of the project, and be objective in analyzing the results.
- » Respect people by listening to them and reacting to them.
- » Strengthen Cooperate Social Responsibility by deepening understanding of its meaning and learn from best practices all over the world.
- » Be transparent and share information openly with the public concerning impacts on local people.
- » Be a model for other private companies in Chinese overseas investment.

For the Chinese Government

While China has rapidly grown to become a new giant on the world economic stage, it's also critical to consider social, political, cultural, environmental, and ethical aspects as well as the image to the outside world as a responsible country. It's even more important considering that state owned companies are considered as representatives of the nation's will in investing in other countries.

- » Adjust and improve laws and regulations on Chinese overseas investment, especially integrate overseas investment environmental protection into current EIA law and increase the penalty for violating EIA law.
- » Enact an SIA law to guarantee investment in development projects will promote people's overall welfare and avoid potential risks.
- » Strengthen the monitoring process of the implementation of laws and encourage public participation.

For Civil Society

- » The suspension of the Myitsone Dam in Burma is considered as a historical victory in the process of Burma's transition from a military regime to a democracy. For Chinese, it can also be a turning point for the central government and overseas investment companies to review their policies and practices on protecting human rights and the environment protection. Increase cooperation between domestic and international NGOs. It is very important to create alliances, as civil society in China is not strong enough to balance the centralized

power. With international NGOs' help, domestic NGOs can gain more space and opportunities to exchange ideas with the outside world. Information sharing is another effective way to develop a strong network among countries to do campaign work.

- » Promote civil society's awareness by conducting forums, seminars, and conferences; create opportunities for policy makers, government officials, companies and academics to discuss this issue; and raise the central government and the public's attention.
- » Monitor public money to ensure it meets its ultimate goal for people's overall development. For almost all the energy-related companies owned by the state, it is the right and obligation of the people to monitor the way their money is being used, and to guarantee a good outcome.
- » Draw attention to both domestic and international media. Use media as an effective tool to raise public awareness to show people's concern about the nation's image and improve a company's performance by writing and publishing articles, blogs, and multi-media approaches to convey the message that we need to monitor how our state-owned companies are behaving overseas and how they contribute to make profits as well as a good reputation for our country.
- » Engage civil legal representatives to urge the Chinese People's Council and Ministry of Environment Protection to adjust the EIA law and enact an SIA law. Voices from scholars, academic and civil society should be heard by the government, and practical suggestions made for the decision makers to decide to launch new regulations and laws.
- » Enforce the legal obligations of companies that invest overseas. Monitor their Corporal Social Responsibility implementation to record the company's performance and make it public.
- » Encourage government departments to monitor the process with the participation of civil society by setting up a monitoring system, such as a green bank, to evaluate the performance of a company as an indicator for the bank before giving a loan.

References

- Chinese Law and Policy on Public Participation
- Legislation Law of the People's Republic of China, effective July 1, 2000
<http://www.china.org.cn/english/government/207419.htm> (English)
http://news.xinhuanet.com/legal/2003-01/21/content_699610.htm (Chinese)
- Regulations of the State Council on the Procedures for Formulating Rules, effective January 1, 2002
http://www.gov.cn/english/laws/2005-08/24/content_25827.htm (English)
http://www.gov.cn/zwqk/2005-06/03/content_4138.htm (Chinese)
- State Council Outline on Comprehensively Promoting Administration in Accordance with

the Law, April 20, 2004

[http://www.law.yale.edu/documents/pdf/Intellectual_Life/CL-PP-State_Council_Admin_Accord_to_Law_Outline_\(Chinese\).pdf](http://www.law.yale.edu/documents/pdf/Intellectual_Life/CL-PP-State_Council_Admin_Accord_to_Law_Outline_(Chinese).pdf) (Chinese)

- State Council Office of Legislative Affairs Notice on Further Intensifying the Degree of Public Participation in Matters Related to Government Legislative Work, issued March 31, 2007

<http://www.chinabaike.com/law/zy/bw/bs/fzb/1376475.html> (Chinese)

The Role of Burmese and Kachin Civil Society in the Suspension of the Myitsone Dam

by Kyi Phyo Wai

Mr. Kyi Phyo Wai is an environmental journalist and independent researcher based in Yangon. He also teaches environmental education, holds capacity building trainings, and conducts environmental project monitoring and evaluation.

Summary

Conquering the controversial Myitsone dam project was a rare victory by local Kachin and Burmese people and was a serious test for the new civilian-led, military-backed government in Burma (Myanmar). The dam was being constructed at the head of the Irrawaddy – the Myitsone (confluence) of the Mali and N'Mai rivers – in Kachin state, northern Burma. This is an area of rich biodiversity and is less than 100 km from a tectonic fault line.¹ Or to put it another way, Myitsone was a huge construction project in an environmentally sensitive, earthquake-prone area where armed ethnic minority Kachin fighters are battling the Burmese army and various forms of human rights abuses occur regularly.² The Myitsone Dam is the largest of seven cascade dams planned in Burma and was being developed jointly by the state Myanmar Ministry of Electric Power, the privately-owned Asia World Company of Burma, and the China Power Investment Corporation. Scheduled for completion in 2019, the dam would have created a reservoir some 766 sq km (296 square miles) – an area slightly larger than Singapore. The vast bulk of the electricity that was to be generated – some reports say as much as 90% – was destined for export to China.³ It is also one of around 300 overseas dam projects in 78 countries in which Chinese dam builders and banks are involved.⁴

1) “Burma dam: Why Myitsone plan is being halted” By Rachel Harvey BBC South East Asia Correspondent 30 Sept 11

2) “Burma dam: Why Myitsone plan is being halted” By Rachel Harvey BBC South East Asia Correspondent

3) “Burma dam: Why Myitsone plan is being halted” By Rachel Harvey BBC South East Asia Correspondent

4) International Rivers: A Turning Point for Chinese Dam Builders by Grace Mang, retrieved on November 3

In addition, this confluence area is also a cultural landmark and heritage site for Kachin people. The Myitsone Dam would have destroyed the birthplace of the mighty Irrawaddy River and their cultural heartland. The Kachin people understand that destroying the Myitsone area is destroying the Kachin people. Because of those reasons, many local Kachin and Burmese people inside and outside Burma strongly opposed the Chinese-supported Myitsone dam project. Local Kachin people have been opposed to the dam project since they heard the news that the project had been proposed in 2006. Since that time, they sent many open letters to the Burmese government, CPI Company and the Chinese president, but they received no replies. However, they never gave up and continued to fight against the dam project using their own strategies, such as praying and gathering signatures asking that the project be stopped. At the same time, some media outlets rarely covered about the dam project until 2010. In 2011, the media, civil society groups, environmentalists, artists and activists got involved in dam campaign activities as mass participation. Anti-Chinese feeling was also on the rise. Fortunately, on 30 September 2011, the Burmese government suddenly called a halt to work on the dam, following the will of Burmese people who were concerned about the consequences of dam impacts.

This report is based on interviews with the local Kachin people, dam victims, and some civil society groups and dam campaigners in Yangon, the former capital of Burma, and Mandalay, Burma's second largest city.

Methodology

I conducted my field research in Tan Hpre village, Aung Myin Thar village (one of two resettlement sites located in west bank of Irrawaddy River), the Myitsone area, Chying Hkrang village in Myitkyina Township (capital of Myitkyina) and Mandalay. Aung Myin Thar village is located nearly ten miles away from Myitsone area and 18 miles north of Myitkyina. Tang Hpre village is located where the Irrawaddy River arises, at the confluence of the N'mai and Mali rivers in Kachin State. Both of these rivers flow from the Himalayan glaciers of northern Myanmar on its northeastern border with China. The river flows south and empties into the Indian Ocean, creating the Irrawaddy Delta. Now in Aung Myin Thar resettlement area, five villages including Mazup (also called Myitsone village) and Tan Hpre village were already forcibly relocated. During my field trip living in these villages, I interviewed dam victims, activists, and some civil society groups that are closely working with these villagers. At the same time, I had a chance to learn about the local Kachin peoples' strategies against the Myitsone dam project. In addition, I met with activist group called Same Yong So Activities organized by the 88 Generation Students Group based in Mandalay and joined the "Save the Irrawaddy" campaign' focusing on concerns of Myitsone dam and the mother Irrawaddy River.

The objective of this research is to study the impacts of the dam on its victims and the strategies of local Kachin people and Burmese people, especially in Yangon and Mandalay, who strongly fought and successfully suspended the controversial dam project.

Introduction

Kachin State, home to 1.2 million people of many different ethnic groups in the northern part of Burma, is rich in many different kinds of natural resources such as forests, rivers, gems

minerals and fertile lands. Unfortunately, Kachin State is currently facing many threats to these natural resources, its environment, and people's sustainable livelihoods, from projects such as the planned construction of large dams, mining, deforestation, large-scale agriculture concessions, illegal wildlife trade and climate change.⁵ Among these, controlling and extracting natural resources adds fuel to conflicts and civil war zones especially in the dam project areas in Kachin State. Unfortunately, these resources are disappearing under the rule of the pro-Chinese Burmese government.



Colorful Kachin residents take part in the Kachin National festival on 10 January 2011

The Kachin Independence Organization (KIO) was one of the most vocal and active opponents to the dam. Over the years, the KIO wrote to the Chinese government stating that the impacts of the Myitsone Dam were unacceptable and that they could not be held responsible for the outbreak of conflict should the dam project proceed. At the same time, most local Kachin people also strongly opposed the project and expressed their concerns. The Kachin consider the site of the Myitsone Dam as their cultural heartland because it is the birthplace of the mighty Irrawaddy River.

Findings

Environmental Impacts

The Myitsone Dam project became the most controversial issue in Burma for many reasons. First, its enormous flooding area would force approximately 15,000 people to move to the relocation site. Second, it would have significant negative environmental impacts. Third, it is located on the Saging fault line, one of the most active earthquake fault lines in the world. The surrounding area near the Myitsone Dam site has already been degraded due to massive destructive development businesses such as gold mining, illegal logging, and land concessions. The 945-page Environmental Impact Assessment (EIA), fully funded by China Power Investment Corporation (CPI), concluded: “There is no need for such a big dam to be constructed at the confluence of the Irrawaddy River. The dam will impact millions that depend on the river and threaten biodiversity and the ecosystem as well.” The Myitsone Dam construction would have altered the hydrological characteristics of the river and prevented sediment from enriching the traditionally highly productive agricultural floodplains downstream.⁶

“The operation at the Myitsone will destroy the beauty of the confluence and directly pollute the Irrawaddy ecosystem, impacting communities living downstream,” the Kachin Development

5) BURMA'S ENVIRONMENT: People, Problems, Policies; page 9

6) Wikipedia Myitsone Dam, en.wikipedia.org/wiki/Myitsone_Dam#Location retrieved October 21

Network Group (KNDG) said in a statement released on 21 October of this year. “On the one hand, the government says it loves the Irrawaddy, but on the other hand they are poisoning the river at its source,” said Ah Nan of the Kachin Development Networking Group. Since the dam project was proposed, logging and land concessions were granted in order to clear the dam site. According to a KNDG statement, “The environment and ecosystem in this area has already been destroyed because of illegal logging and gold mining.” Ah Nan added, “Before the dam project had even started, the Chinese company (CPI) had been exploiting natural resources through illegal logging. Also, large-scale gold mining at the dam site began in 2010, leaving toxic mercury and cyanide that are used in the mining process to be dumped without regulation into the rivers.”

“It is likely that there will be a big earthquake if this kind of mega dam is built. Large dams always used to store a lot of water in the reservoir and the weight of this huge amount of water can cause earthquakes.” said Aung Kyaw Zan, Project Manager of National Engineering and Planning Services (NEPS) of Burma. He is also a former hydrological engineer.

Why Should the Myitsone Dam be Cancelled?

“If the Burmese and Chinese sides were really concerned about environmental issues and aimed at the sustainable development of the country, there would be no need for such a big dam to be constructed at the confluence of the Irrawaddy River. The construction of the dam on the Irrawaddy should be avoided due to the changes in downriver hydrology which may affect navigation, the riverine ecosystem and the delta ecosystem and will lead to negative impacts on the economy.”⁷

- EIA of the Myitsone Dam project

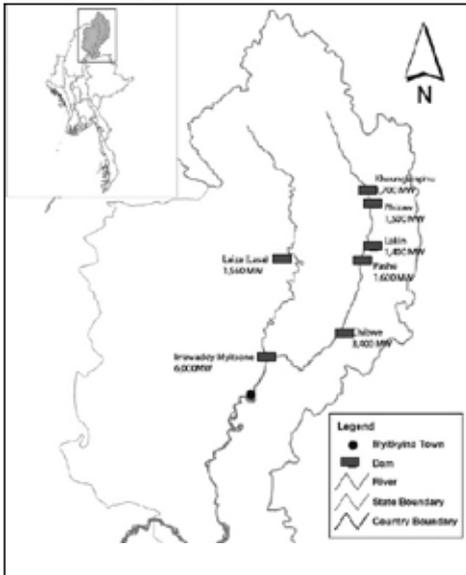
The 945-page EIA was conducted by a team of 80 scientists from Burma (from the Biodiversity and Nature Conservation Association) and other from the Changjiang Institute of Surveying, Planning, Design, and Research (CISPDR) of China. The EIA report continues that, “with experts, find an alternative option to avoid construction of Myitsone dam at the confluence.”⁸

The construction of the Myitsone Dam project did not adhere to the principles of free and prior consent and also violates its own assessment and international treaties such as the United Nations Declaration on the Rights of Indigenous Peoples. In addition, the EIA report points out that:

“Eco-regions which are nationally important, regionally significant and globally outstanding will be directly impacted by clearing and logging of the inundation areas and construction activities for a series of dams in Kachin State... Of particular concern are the loss and fragmentation of key ecosystems and the loss of key, endemic and endangered species of both flora and fauna...”

7) Environmental Impact Assessment (Special Investigation) on Hydropower Development of Ayeyawady River Basin Above Myitkyina, Kachin State, Burma Page 227

8) Environmental Impact Assessment (Special Investigation) on Hydropower Development of Ayeyawady River Basin Above Myitkyina, Kachin State, Burma, page 25



Definitely there will be negative impacts on potential availability of traditional medicinal plants.”⁹

“Loss of the confluence (Myitstone) will be a terrible tragedy for all of Myanmar people, especially the Kachin.”¹⁰

Dam projects in Kachin State are deeply unpopular, yet numerous appeals to the Chinese companies and government to stop the dams have gone unanswered. CPI's own assessment warned that, “The majority of local races oppose construction of dams” and called for consultation with and consent of affected peoples. Despite the EIA findings, CPI decided to gamble by investing USD 3.6 billion, money originally from Chinese tax payers. At the same time, the company violated its own standards and ignored local Kachin people's rights. This issue could spark civil war as well.

“Chinese companies are increasing their investment in Burma yet they are not following their own standards. While CPI is hiding its assessment from the people of Burma, construction of the dams is speeding ahead,” said Sai Sai, the coordinator of Burma Rivers Network.

Social Impacts

During the dam construction process, local Kachin people lost their lands and farms for clearing areas to build roads for transportation, housing for Chinese workers, and extraction of gold. According to many local Kachin people, the Burmese government took bribes from CPI. Before the dam project began, the Kachin people had been living peacefully and in prosperity in Kachin State. But after the project was proposed, they faced difficulties because many Chinese people came to Burma and began gold mining, logging, and taking other natural resources.¹¹ Local people were replaced by these Chinese people because they were wealthier and could buy what they wanted.

“We can't do anything. The main problem is that the military government gave a favor to the Chinese people to let them do business in our land. Our natural resources were extracted and run out day by day. Now we have nothing left. The government and Chinese companies took my land. Chinese businessmen are the new era colonial creatures. They know only their profits. They ignore local peoples' interests. I don't want Chinese people doing business in my home land anymore,” said Lawn Ran, a villager from Myitstone village.

9) Environmental Impact Assessment (Special Investigation) on Hydropower Development of Ayeyawady River Basin Above Myitkyina, Kachin State, Burma, page 21

10) Environmental Impact Assessment (Special Investigation) on Hydropower Development of Ayeyawady River Basin Above Myitkyina, Kachin State, Burma, page 25

11) Interviewed with local people near dam site during field trip, retrieved on 4 October 2011

Food Insecurity

For villagers living in the relocation area, food security is the main problem they will face in the very near future.

“When I got this place in December of last year, the authorities gave us rice....for each villager for about one year. Right now the rice is nearly gone. I don't know how my family can survive after this quota is finished. I can't go back to my village (Tan Hpre) because we lost our land- it was taken by the company and the Burmese authorities. Some people got a small amount of compensation, but most villagers, including me, got nothing. I am very concerned about us dam victims. We will all have to face a food crisis in very near future,” said Zai Du Wah, of the dam victims from Aung Myin Thar village (a relocation site from west bank of the Irrawaddy).

According to the villagers, the soil in Aung Myin Thar village is rocky and not able to grow many crops. “Here we can't grow many kinds of vegetables because the soil is very rocky everywhere. I have a farm in my old village, but I can't go back. The government does not allow me to go back and to cultivate on my own land.” said a sixty year old female living in Aung Myin Thar.

Relocation Anxiety

Most of the relocated villagers at Aung Myin Thar look unhappy and they all want to go back to their old homes. Some villagers have tried to go back to their old homes since the new Burmese government announced that the Myitsone Dam project was halted. Even though the villagers are happy to hear such good news, they can't go back to their old homes because the authorities won't allow them to go back. Five villages have already relocated to the two resettlement areas, Aung Myin Thar on the west bank) and Maliyan (on the east bank), which have a total population of about 1500 people.

Ways and Strategies

The Local Kachin Community

Local Kachin communities including villagers, Kachin church-based organizations in Myit-kyina, and the Kachin Independence Army (KIA) have sent numerous appeal letters to Burma's military government, the Chinese government, and CPI Company. Several times, they called for an immediate stop to the dam project. A few Burmese civil society members and writers have also called attention to the deteriorating condition of the Irrawaddy River. However, the mainstream media and the general public remained largely silent on these issues until a confidential Environmental Impact Assessment (EIA) report was leaked to social activists and the media in June of 2011.

Mass prayer ceremonies in Kachin communities calling for the protection of the rivers have been held along the river banks and in churches up and downstream. In a face-to-face meeting with the Burma Army's Northern Commander, local women made it clear that no amount of compensation will make up for the losses these dams will bring to their communities and future

generations. In addition, downstream artists and writers from across the country have organized tours and art exhibitions to highlight the importance of the Irrawaddy for all of Burma. Overseas Kachin communities have sent letters to the Embassy of China in seven countries and held demonstrations in New Delhi and London. All appeals were ignored. Whatever local Kachin people did to stop the controversial Myitsone Dam project, the government and Chinese company (CPI) neglected local peoples' requests and appeals.

“CPI cannot claim to be unaware of the feelings of the people of Burma about this project,” the Burma Rivers Network (BRN), a Thailand-based coalition of NGOs focused on dam-building in Myanmar, said in an October 4 statement. BRN also said that, “The villagers at the dam site, numerous political and community organizations, and international human rights organizations have attempted to contact CPI and discuss the concerns about the impacts and process of the project, but CPI never responded to these attempts at dialogue.” In spite of this lack of communication, CPI is not ignorant of the dam’s ecological impact.



The democracy leader Aung San Su Kyi giving a speech at The Stretch of A River Art Exhibition which focused on the Myitsone Dam issue (Photo 1) and people from 26 different civil society groups join the Irrawaddy Campaign Movement held in Mandalay on 10 September 2011 (Photo 2).

Media

Since 2010, the media sector in Burma has had a little bit more freedom than before. Even though the Burmese government still strictly controls the media, journalists inside and outside the country have covered the dam issue in weekly journals since late 2010. Journalists inside the country tried to cover Chinese-supported dam project both direct and indirectly. “I have focused on the Myitsone Dam issue since early 2010. I couldn't write about this issue freely due to the strict state-controlled Scrutiny Censorship Board. But I always write about consequences of the dam as much as I can. People want to read about the real situation of the Myitsone Dam's impacts,” said Ko Aung Htun, a freelance journalist, who works for a weekly newspaper inside Burma focusing on environmental issues. “From my point of view, this project has to stop completely. The Irrawaddy is part of our national heritage. There are lots of benefits from it. It is our responsibility to protect our national economic benefits. I urge the parties involved to weigh

things carefully before a catastrophe happens,”¹² said Dr. Than Htut Aung, chairman and CEO of the Eleven Media Group (EMG), one of the leading private print media outlets in Burma. He became a hero who strongly criticized the Burmese government. Veteran Journalist Ludu Sein Win also stated that, “As a journalist, we have to stop things from being destroyed, going extinct and dying out.”

The Role of Civil Society Groups in Yangon and Mandalay

At the beginning of 2011, fighting against the dam project was escalating daily. Throughout the country, especially in Yangon and Mandalay, activities against the dam project spread quickly throughout the country. Unless the Burmese government manages an acceptable resolution to this issue, however, the “Save the Irrawaddy” discourse could gradually grow into something else: an “Irrawaddy Uprising.” This issue is so close to home for the people of Burma because it involves not only national development but also national dignity. Media, civil society, environmentalists, academics, the NLD (National League for Democracy, led by Aung San Su Kyi), politicians, artists, and people who love nature got involved in fighting the Chinese-supported dam project. Fortunately, on 30 September, Burmese President Thein Sein announced that the dam project was halted.

“We don't want the construction of Myitsone Dam in Kachin State. Building such a large dam could cause so many impacts such as changing the water navigation system, losing water resources for irrigation, and a decline of fish to downstream areas. Building a large dam on the Irrawaddy also means killing the main river and also would affect the rice-bowl area of the Irrawaddy Delta. This delta produces about 60 percent of rice for the whole country. The Irrawaddy is the life-blood river for millions of Burmese people and diverse ethnic groups living along the river banks as well,” said Maung Maung Oo, an activist and one of the leaders of Same Yong So Activities Group based in Mandalay. “We have already done 21 campaigns related to environmental issues surrounding Mandalay and other areas. We all strongly oppose the Chinese-backed Myitsone Dam project. Thus we did many, many campaigns related to the dam. For campaigns, we used different kinds of strategies including literary talks, Save the Irrawaddy activities and art exhibitions. We have reason to use these kinds of strategies because we can't do strong campaigns like mass demonstrations or protests freely inside Burma. All our members have experienced being in jail and detention because most of us are of the 88 Generation,” added Maung Maung Oo.

Youth from the media and development sectors urged the government since early 2011 to scrap the Myitsone project. But the government ignored them. “The Irrawaddy is not only an essential element of millions of people's lives but also an historical place, like Bagan, the ancient city of Burma,” said Ko Myo Ko Ko, age 27, who works for a local non-governmental organization that focuses on environmental issues.

Outside Campaign Movements

Outside Burma, activists in exile have actively carried out protests in various countries. Since

12) Eleven Media Group Response(11th August) Retrived 1 November 2011

2009, some outside campaign groups secretly worked with Kachin activists inside Burma and did activities to fight against the Myitsone Dam. In February 2010, the UK-based Kachin National Organization (KNO) protested against construction of the dam in front of the Burmese Embassies in the UK, Japan, Australia and USA. United States diplomatic cables leaked by Wikileaks revealed that the U.S embassy in Yangon funded some of the activist groups.¹³



Prominent environmentalist Myit Zaw delivers a speech on the Myitsone issue at a Save the Irrawaddy Talk in Yangon on 9 September 2011 (Photo 1), as the audience cheers (Photo 2).

The Irrawaddy Dam Issue Creates Unity

The tempo of “Save the Irrawaddy” movements and campaigns rose in Yangon and Mandalay and outside Burma, reaching a peak a few months before the dam project was suspended. Citizens throughout the country didn't want the dam project and showed their concerns about it. Environmentalists, activists, journalists, and politicians, including pro-democracy leader Aung San Su Kyi, got involved in those movements and activities. “If we can pursue with unity one issue that we all believe in, there will be more unity on other issues. I would like to request all people from different sectors to get involved,” Aung San Su Kyi urged activists to cooperate for the conservation of the Irrawaddy River at the opening of the 'Sketch of a River Art Exhibition' at Gallery 65 in Yangon's Dagon township on September 22, 2011.

Conclusion

Growing numbers of people in Burma have come to view the Irrawaddy Dam issue as a national issue. The Irrawaddy issue is a case in point. Opposition groups (not necessarily political ones, but broadly inclusive societal groups) have significant leverage to press for issue-specific change. The Irrawaddy crisis offered the broadest issue base because it can be related to human rights, national security, ethnic conflicts, foreign investment and trade, poverty and sustainable development, environmental issues, and the empowerment of civil society, among many other

13) Myitsone Dam: Wikipedia Retrieved 30 October 2011



Protesters in Malaysia chant slogans near the Burmese embassy in Kuala Lumpur on Sept. 22 2010 as they call for suspension of the Myitsone Dam

issues. “We Kachin and Burmese people learned a very good lesson from the Myitsone Dam issue. People everywhere in Burma got involved in the case and united. We knew very well the value of unity. In the future there will be more campaigns against destructive development projects,” added Zawn Lwan, a Kachin activist from the Myitsone Dam site. As a result of the Myitsone campaign, civil society groups, activists, media, academics and environmentalists are more organized and networked with each other.

But there is still much work to do.

World Bank and ASEAN Involvement in Labutta New Town Construction Projects Following Cyclone Nargis

by Naw Grace

Ms. Naw Grace worked as a Water Project Officer in Arawaddy Division, focusing on emergency water supply response, community health, sanitation, and gender issues in the aftermath of the Nargis cyclone.

Summary

This paper analyzes the social impacts of relocation, and discusses how the local people in Laputta Township, Myanmar can stabilize and advocate for their livelihoods. Myanmar is a country under military rule and the dictatorship tends to hide images of people suffering from government-implemented development projects. The military junta does not consider or respect the people's culture, society, civilization, education, health, or environment.

After Cyclone Nargis, the Association of South East Asian Nations (ASEAN) and Tripartite Core Group (TCG) conducted an assessment in recovery relief called Post-Nargis Joint Assessment (PONJA) without informing local communities. The World Bank gave \$850,000 to ASEAN for the Nargis Cyclone Relief Project, which was used for PONJA¹.

In this paper, I seek to understand the social impacts on the local people after they were displaced from their villages. I would like to help local communities to gain a better understanding of World Bank and Asian Development Bank (ADB) investments, as well as Safeguard Policies and roles of ASEAN in Myanmar. I also hope to encourage local communities to understand and protect their rights according to Myanmar's 2008 Constitutional Laws. This report discusses the ways in which these policies and laws are currently not followed, as well as some of the difficulties in accessing information from the government.

In the conclusion, I list some important points about the policies that international financial

1) <http://web.worldbank.org/external/projects/main?menuPK=51618494&pagePK=218616&piPK=217470&query=myanmar&theSitePK=40941>

institutions and others should follow. In addition, I give recommendations to the government, ASEAN, the ADB, and the World Bank concerning the displaced people that suffer and struggle for survival. Lastly, I would like to raise awareness within communities to help them to understand the banks' safeguard policies.

Introduction

Myanmar is a tropical land of golden pagodas and golden sunlight, wondrous sites and sunny beaches, a land dotted with thousands of glittering golden spires. Myanmar also has many natural resources such as gems and jewels, agricultural lands, natural gas, timber, zinc, copper, tungsten, lead, coal, limestone, hydropower potential, marine products, and petroleum; however, growth and economic progress are stifled by government control and serious financial mismanagement. The money goes to government officials' pockets and towards strengthening the military dictatorship. This financial mismanagement means that the military regime entrenches their military power and continues to violate human rights.

The State Law and Order Restoration Council (SLORC) ruled Myanmar by martial law from 1989 until national parliamentary elections were held in May 1990. These elections were generally judged to be free and fair. The military made little effort to intimidate voters, erroneously assuming that their preferred candidates would win. The results were an overwhelming victory for Aung San Suu Kyi's National League for Democracy party, which won nearly 60% of the vote and 392 of the 485 seats, even though she was under house arrest at the time of the elections. The SLORC refused to honor the results or call the parliament into session, instead imprisoning many political activists. The Union of Myanmar is currently ruled by a military body called the State Peace and Development Council (SPDC).

The ADB and World Bank had been pressured by many political activists and others international organizations. Because of these pressures, as well as US and EU sanctions, those two banks can not do investment in Myanmar. The last loan and technical assistance project for Myanmar from the ADB and World Bank was in 1986. The ADB still allows funding to Myanmar through its participation in the Greater Mekong Sub-region Economic Cooperation program (GMS program). The ADB does not give funds directly to Myanmar, but does supports private companies from China, Thailand, India and Korea investing in Myanmar².

In 2009, the SPDC planned to build a new town on the Yangon-Laputta highway, three miles from Laputta Township. After the master plan came out, the local government started to relocate the people who lived in that area. The villagers did not get any information before the project started. They had no chance to complain to the government. The government told them that it is a good plan for their future because of frequent suffering from natural disasters. This project came from the SPDC after Cyclone Nargis devastated the delta. They would like to move the town to save the people from natural disasters, which happen without warning³.

The ADB and the World Bank want to invest in Myanmar in order to implement development

2) ADB and World Bank policy in Myanmar; Analyzing bank involvement in Post-Nargis joint assessment (PONJA) and future investment policies in Myanmar, prepared by Nang Muay 2009

3) http://www.irrawaddy.org/article.php?art_id=18416

projects. One of their main aims is the reduction of poverty in Asian countries, and Myanmar is one of the poorest countries in the world. For this reason, the ADB and World Bank invested in the Nargis Relief efforts. Participating in Nargis relief is a tool for the ADB and the World Bank to ensure more investments in Myanmar in the future. Therefore, the ADB and the World Bank need to make sure that safeguard policies are followed. If not, people may suffer as a result of the implementation of development projects⁴.

After Cyclone Nargis, ASEAN and TCG conducted an assessment in recovery relief called PONJA (Post Nargis Joint Assessment) without informing local communities. For this reason, Nargis relief is a tool for the ADB and World Bank to invest for the future development projects in Myanmar⁵. The World Bank disclosed data about its loans and grants to Myanmar for the Nargis Relief project through its website. The World Bank gave \$850,000 to ASEAN, which in turn gave funds to local NGOs and INGOs to implement the project according to plans from PONJA⁶. In this report, I will examine the social impacts of the resettlement of people in Ywar Thit Kone village, Laputta Township, Myanmar.

History of Arrawaddy Division

The Arrawaddy division of Myanmar occupies the delta region of the Irrawaddy River. The capital city is Patheingyi. The delta region is densely populated with three primary ethnicities: Burmese, Rakhine, and Kayin. Some Indians also live in the area. The three main religions represented are Buddhism, Christianity, and Islam. The total area of the Arrawaddy Division is 35,138 square kilometers with a population of over 6.5 million people. There are six districts, including Laputta District, and 26 townships, 1,912 village tracts and 11,651 villages.



Traditional livelihoods

The delta region plays an important role in the cultivation of rice with its rich alluvial soil. It is located 3 meters above sea level and it includes fishing communities in a vast area full of rivers and streams. The Arrawaddy Delta is the main source of rice that provides people's food in daily life. Fisheries are also important for the Delta people's livelihood. The Arrawaddy Delta produces fish and prawns, which can also be used to make fish paste, dried fish, dried prawns and fish sauce.

In May 2008, the Delta suffered a major disaster. It was devastated by Cyclone Nargis, which

4) ADB and World Bank policy in Myanmar; Analyzing bank involvement in Post-Nargis joint assessment (PONJA) and future investment policies in Myanmar, prepared by Nang Muay 2009

5) ADB and World Bank policy in Myanmar; Analyzing bank involvement in Post-Nargis joint assessment (PONJA) and future investment policies in Myanmar, prepared by Nang Muay 2009

6) <http://web.worldbank.org/external/projects/main?menuPK=51618494&pagePK=218616&piPK=217470&query=myanmar&theSitePK=40941>

reportedly killed at least 138,000 people and left about 2.4 million homeless. The cyclone made landfall in the country on May 2, 2008, causing catastrophic destruction. Laputta Township was reported to have 80,000 dead and suffered extensive damage and loss of livelihoods. Most of the people affected by Nargis were women and children who are, in normal times, more vulnerable and less likely to have access to services or control resources. Many people did not survive the storm. Those who did survive did not have access to food, water, and shelter. Many survivors suffered mental health problems from their experiences during Cyclone Nargis.

Project Background

On Feb 6, 2010, at 7:30 am, vehicles from a department of the government arrived without prior warning in Kyauk Maw and Ywar Thar Yar (also called Ywar Lay Kone) villages to relocate villagers to Tha Yet Kone Tar Yinn village by order of the government. They named the resettlement village Ywar Thit Kone. It is located west of Three Mile New Town; it is located in a remote area, which makes it hard to communicate with people in Laputta town. Even though there is a road, people do not own vehicles to travel to town. The government authorities ordered Ywar Thar Yar village and Kyauk Maw village as the first priority to be relocated as part of the plan for the Three-Mile Myo-Thit new town construction project. This project was lunched by the Laputta District government with Nargis Relief money. “Three-Mile Myo-Thit is a new town established on the outskirts of Laputta, which Cyclone Nargis relief money helped modernize.”⁷

The government would like to implement this project to provide more resistance and more security from natural disasters⁸. The new town is emerging from the devastation of Cyclone Nargis. Government offices at Three Mile Myo Thit are on the verge of completion and nearly a third of the plots of land have been sold to future home-owners. The plots have been specially priced to attract survivors of the 2008 cyclone. The town is three miles from Laputta Township, and well above sea level. The project was launched by the Laputta District Peace and Development Council in the wake of the disaster. Also included will be a 200-bed hospital, BEMS school, playground, youth training centers, various kinds of private cold storage and 2,500 plots of various sizes.

Methodology

My research was conducted in the relocated village and information was based on the local communities who were displaced from their original villages. I conducted formal and informal discussions in the relocated villages, and relied on two approaches to gather the data for analysis. The primary data were collected through the displaced villagers, including questions about food, shelter, water and health. I gathered secondary data from the internet and international NGOs operating in the area.

Gathering information from the local people was difficult because of strict security. Due to the complicated political condition, I was not able to spend more time with the local people. Therefore, I cooperated with my friends who are working closely in the relocated villages. I also

7) <http://www.global-sisterhood-network.org/content/view/2444/59/>

8) <http://www.siamdailynews.com/2010/06/13/myanmar-ayeyawaddy-delta-enjoys-economic-progress-two-years-after-storm>

approached the Land Department to get updated information about the Three Mile Myo-Thit New Town.

Findings

Unlawful Relocation

The World Bank's safeguard policy states:

"Involuntary resettlement should be avoided where feasible, or minimized, exploring all viable alternative project designs. Where it is not feasible to avoid resettlement, resettlement activities should be conceived and executed as sustainable development programs, providing sufficient investment resources to enable the persons displaced by the project to share in project benefits. Displaced persons should be meaningfully consulted and should have opportunities to participate in planning and implementing resettlement programs. If the impacts include physical relocation, the resettlement plan or resettlement policy framework includes measures to ensure that the displaced persons are:

- (i) provided assistance (such as moving allowances) during relocation; and
- (ii) provided with residential housing, or housing sites, or, as required, agricultural sites for which a combination of productive potential, locational advantages, and other factors is at least equivalent to the advantages of the old site.

Where necessary to achieve the objectives of the policy, the resettlement plan or resettlement policy framework also include measures to ensure that displaced persons are:

- (i) offered support after displacement, for a transition period, based on a reasonable estimate of the time likely to be needed to restore their livelihood and standards of living; and
- (ii) provided with development assistance in addition to compensation measures described in paragraph 6(a);
- (iii) such as land preparation, credit facilities, training, or job opportunities"⁹

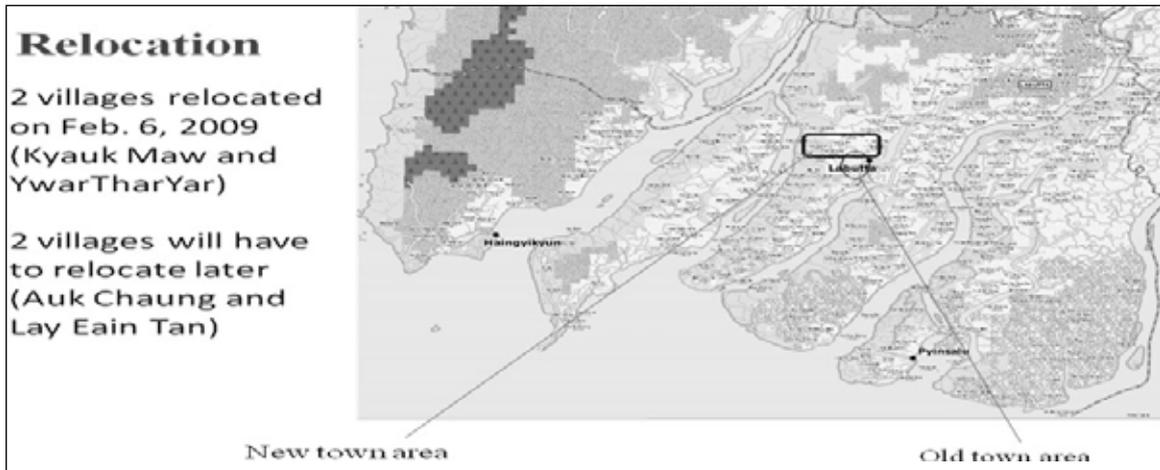
In reality, the project implementers did not follow any of these safeguard policies. As part of a strategy to force the relocation of thousands of local people, the SPDC has extended the military throughout the country wherever they implement development projects.

One woman from the relocated site said, "We didn't know when we had to relocate. We had no right to resist displacement." The woman expresses the feeling of many villagers: they are being forced to relocate to a resettlement village without being asked what they want, and are not being given information about when they will be displaced.

9) <http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/EXTPOLICIES/EXTOPMANUAL/0,,contentMDK:20064610~menuPK:64701637~pagePK:64709096~piPK:64709108~theSitePK:502184,00.html>

Relying on the Natural Resources

In rural areas of Arrawaddy division, men and women are directly dependent on fisheries and agriculture. They go fishing in the river and creeks to catch fish, shrimps, and crabs. The Arrawaddy division is the country's rice bowl and almost all people in this area rely on agriculture. Because of heavy rain and fertile soil from the Arrawaddy River, villagers can make a good income through cultivation.



Laputta Area Map

Compensation and Corruption

The villagers got two kinds of compensation: compensation for farmlands and compensation for plots of land to build houses. There is a lot of corruption concerning farmland because the government did not disclose information and official documents about the farmland compensation. Before they gave compensation to the villagers, they sent Land Department officers to measure the farmland yields per acre. They gave \$220 per acre for high yielding farmland and \$120 per acre for low yielding farmland. For the land on which a new drinking pond would be constructed, the villagers got \$150 per acre. One person working in a government department got \$300 per acre for his farmland to construct a hospital, police station, and government district office. This process caused a lot of corruption among the government officers and staff.

One businessman asked the local government to give him compensation for his farmland based on the market price. But the local official did not respond, and the businessman received no answer to his request. So, he went to new capital city Nay Pyi Daw to make sure he would receive compensation according to the market price. However, the only thing he received from his appeal was having all of his farmland confiscated by the government. He said, "I did not get any compensation for my 11 acres of farmland because I went to Nay Pyi Daw to fight for compensation. Now the government uses my land for a sub-electric power station."

People who are affected by the project each received 10 X 20 square meter plots and 30 pieces of roofing sheet to build a new house in the resettlement village. However, they did not get any building materials from the government, so some of the villagers sold some of their roofing

sheets to buy building materials. They built their houses with poor building materials that can be damaged by even a weak wind. A woman from the relocated village said, “We have to build our resettlement house with poor building materials.” At the resettlement village, none of the villagers received any legal documents for the plots of land on which they built their homes.



Housing conditions at the relocated village

The villagers have no more land on which to plant vegetables. Fortunately, a humanitarian organization provided them with latrines; however, their houses and latrines will be damaged in a few months because they are meant for temporary use. If there are five or more members in the family, there is not enough space to sleep. Some of the relocated villagers use plastic sheets to cover their houses or as walls. The villagers urgently need shelter for their security.

Lack of Occupations

The ADB expresses that “the ADB seeks to avoid involuntary resettlement wherever possible; to minimize involuntary resettlement by exploring project and design alternatives; to restore or enhance livelihoods of displaced persons relative to pre-project levels; and to improve the standards of living of the affected poor and other vulnerable.”¹⁰

Most of the relocated people are fishermen who used to live and work along the river peacefully. Now, they struggle to earn a living for their families. They are exhausted from working at a dangerous construction site as day laborers in order to feed their families. Mothers must also leave their children and house duties to work at the unsafe construction site.

“I remember that we happily planted in the rice paddy together before. But now we have to earn our daily food by working at the dangerous construction site.”

- A woman from the resettlement town

10) <http://www.adb.org/Resettlement/default.aspe> groups

One family at the relocated village explained that the river was not too far from their home in the old village. Their father was a fisherman, and their mother sold fish in the market. This livelihood was enough to sustain their family. After they were displaced from their old village, they did not know how to earn money. All of their fishing gear is useless at the new village. So, the father, the mother and the oldest daughter go to the construction site to earn money for their livelihood. A man from the resettlement village said, “Now we are daily workers doing masonry, carpentry and construction work. After this project, we face many problems with our daily livelihood.”



Drinking pond and latrines

Physical Impacts on Water and Sanitation

Villagers can get water from the nearby river, from rain water between June and October, and from ponds during the dry season. Women and children bring water home for washing, cooking and bathing. People who live at the relocation site have better access to water. They are happy about the pumps, which are set up at the new pond because it is easier to get water and is located closer to their house. However, the quality of water is still poor and contaminated because there is no fence to protect the pond from animals and other contaminants.

When the villagers first arrived at the resettlement village, they could not build latrines because they had to build their houses first. They also did not have enough building materials to build latrines. Some of the villagers suffered from diarrhea during that time. Later, a humanitarian organization came and brought latrine materials for each household. But the materials can only be used for a short period; they are not for long-term use.

Impacts on public health and mental health

Article 25 of the Universal Declaration of Human Rights (UDHR) states that everyone has the right to an adequate standard of health care. The villagers at the relocation site do not get health care when they get sick because there is a lack of medical care and money to buy medicine. The villagers are potentially susceptible to malaria. There is a lot of standing water in their environment, which can become contaminated by mosquitoes and parasites.

The aim of ASEAN Charter Article 1, Purposes, Point 11 is “To enhance the well being and

livelihood of the people of ASEAN by providing them with equitable access to opportunities for human development, social welfare and justice.” In this resettlement village, most of the villagers suffer mental health impacts as a result of losing their family members and losing their homes, livelihoods and property in Cyclone Nargis. At the relocation village, there is no health care center or school. Additionally, if someone in their family gets sick, they cannot care for him or her because they are day laborers, and therefore, cannot be absent from their work.

In this village, almost all villagers are anxious for legal documents of land title. Even until now, they have no legal documents for house ownership. A man from the resettlement said, “I have no mental security without legal documents of house ownership.”

Impacts on Women and Children

Most of the women, married or unmarried, are working at the dangerous construction site to carry cement mortar as daily laborers in order to feed their family and help their husbands as much as they can. Their husbands’ income is not enough to feed their family for one day. When the wives go to work, they have to leave their children and house duties. Therefore, the eldest son or daughter must carry the duties of their mother, taking care of their younger sisters and brothers, cooking and washing. In order to fulfill these duties, the eldest child must leave school.

“Now I work at a dangerous construction site and carry cement mortar to feed my poor family and I took my son out of school to take care of my daughter.”

- A woman from the relocated village

In the wake of Cyclone Nargis, women who faced economic and other hardships, such as losses of livelihood and farmland, have become sex workers.

“There were no massage parlors or karaoke bars before, so there were only a few girls in the sex business, and new town has become a sort of designated place for them,”

- A Laputta businessman¹¹

Conclusion

The 2008 Myanmar Constitutional Law, Paragraph 357, states that “The Union shall protect the privacy and security of home property, correspondence and other communications of citizens under the law subject to the provisions of this constitution.” In fact, the government did not comply with the law.

The lives of people in these relocation sites have become worse due to the new town construction project. Since relocation, many of them have lost their jobs and income. They have to work

11) <http://www.global-sisterhood-network.org/content/view/2444/59/>

at the dangerous construction site for a daily income for food, but it is not enough to satisfy their needs. As a result of these projects, they suffer burdens and stress in their lives.

The water pond near the resettlement village is not good for their health because it has no fence. It can be easily contaminated and cause water-borne diseases. The relocation village did not get sufficient support in the form of building materials from the government. So, some of the villagers sold their roofing sheets to buy building materials. Some of the villagers cannot build their houses, and they are saving money to build their houses. Even if they can build a house, they have to build it with poor building materials. When I visited their houses, there was no space for sitting. If they have five or more family members, there is not enough space to sleep. When I saw them, I felt their suffering as my own family suffering. They need stronger materials to build houses in which they feel safe.

There is no health center in the relocation village. Even if there was a health care center, many villagers would still not have access to health care because they have no savings. If someone gets sick in their family, no one can take care of him or her because they are day laborers and cannot be absent from their work. Almost all of the villagers have anxiety over their lack of legal documents for home ownership. This causes a lot of stress and worry.

The government officers did not disclose information regarding compensation to the villagers, meaning that there is a lot of corruption among them. The better the relationship with the government officer, the more compensation villagers can get. There is no transparency in compensation.

Most of the villagers don't know that they have rights, so they are scared of the government. Some of the villagers did not know about the World Bank, the ADB, or even ASEAN. They have no knowledge of the safeguard policies to use to advocate for their rights. Some of the villagers came to me and asked me to explain the ADB and World Bank safeguard policies. They wanted to know how to advocate with them and which strategies they could use. I was so surprised, and I decided that I would help them as long as I can.

Recommendations

Urgent Action for the SPDC:

- » Provide food security and clean water for the relocated peoples' daily lives.
- » Provide building materials for the relocated people. Provide legal land title documents for the resettled villages .
- » Provide counseling for the people's mental health care.

Long-term Action for the SPDC:

- » Provide sustainable livelihoods for the relocated people, such as fishing and farming.
- » Provide transparency and clear information to the people.

- » Provide vocational training for the relocated people.
- » Follow the 2008 constitutional law and the ASEAN Charter.
- » Stop corruption and provide fair compensation.
- » Promote children's and women's rights, as stated in the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of Discrimination against Women (CEDAW).
- » Promote human rights and respect the UDHR.
- » To ASEAN, the ADB, the World Bank and other International Institutions:
- » Raise awareness and provide trainings about the ADB and World Bank safeguard policies.
- » Make sure that there is local involvement in resettlement projects, and give opportunities for public participation regarding the project.
- » Review and evaluate the project implementation.
- » Stop providing technical support, grants, and loans to the SPDC.
- » Pressure the SPDC to follow its constitutional laws.

Local Action, Central Policy, and the Law

The Dawei Deep Sea Port and Special Economic Zone

by Myo Aung

Mr. Myo Aung is a Media Coordinator at the Southern Society Development Network. He writes news and radio scripts on environmental and social issues, provides educational support for children, and writes stories and poetry. He is interested in the potential impacts of the deep sea port and industrial estate currently under construction in his hometown of Dawei.

Abstract

If you have heard of the country “Myanmar,” (Burma) you have heard of the atrocities committed by the military government such as civil war with ethnic armed groups, human rights abuses, corruption, child soldiers, migrant workers, torture, and killings of citizens, monks and others. However, the political situation changed in 2010. Now the country is in a transitional period. The civilian government is trying to change bit by bit. Before the civilian government, Myanmar was under military rule. The 2008 constitution gives many chances to try for democratic space. In this transitional period, most economists, including U Myint, who is an economic advisor for the president, are primarily concerned with reforming the country’s economy. Some old politicians do not agree with this idea. They want to reform the country’s political system first. This is very controversial issue.

Regardless of what comes first, the target is to change something in the country. Now the Dawei Deep Sea Port and Special Economic Zone is under construction. The government and economists expect the Dawei project to become a gateway to connect Myanmar to the world. Even through the national civilian government is transitioning to a democratic way, most local government officials are not familiar with democratic concepts. The Theninthayi Government, which is led by Minister U Khin Zaw, commonly commits land confiscation, corruption, nepotism, and misuse of power. These problems will affect the local community when a mega-development project is undertaken.

This paper will demonstrate the difference between the law and the current situation, the

difference between beautiful words and actions. What is the local government like in Dawei? What is the current situation of the local community? What should the local government do? How should the community protect their rights? If central policy and local action are different, will the country face development failure and opportunity failure?

Introduction

Some people say that if something is small, it is beautiful. But most of us don't care about small things, small cases and small lives. Most of us are interested in huge things. We try to be great, to develop, to get a high living standard, to get more and more. It is good, but we should care about small things, the meaning of high living standards and the meaning of the development.

Large-scale industrial development projects are one kind of huge thing. They are symbols of capitalism and centralization. Most developing countries are interested in these kinds of projects. They believe they will enhance the country's development. Joseph Stiglitz, a well-known economist, said that special economic zones are not a necessary key for a country's development in reality, because most money goes to the developer or investor (international corporations). In his book *Making Globalization Work*, he analyzes international corporations. He argues that international corporations are more powerful than governments, because of their incomes. In 2004, General Motors made 191.4 billion USD. This income is more than the GDP of 148 countries. In 2005, the income of Wal-Mart was USD 285.2 billion. It was more than the GDP of all of the Saharan African countries combined.

The GDP of Myanmar was 42.953 Billion USD in 2010. The income of Italian Thai Development (ITD, the main investor in the Dawei special economic zone) was 92.231 million USD, or 0.2 % of the GDP of Myanmar in 2010. Compared with other corporations, ITD is small. However, its investment for the construction in Dawei is 8.6 billion USD and investment in the whole project will be 58 billion USD. Many international corporations will work with ITD.

Developing countries welcome international corporations for the taxes, job opportunities, and foreign investment generated. However, the objective of business is to make money so investors try to make profits, both legally and illegally. They try to reduce the costs of protecting the environment and social welfare and other costs of corporate social responsibility. According to the Build Operate Transfer system (BOT), the developer will eventually transfer the project to the government. At that time, the government will have to solve all the negative social, environmental and health problems with public tax money.¹

Currently, Italian-Thai Development is planning a deep sea port and special economic zone in Nabulal region, Dawei province, Theningtharyi Division, Myanmar. Italian-Thai plans to develop it into a trading hub on the Andaman Sea.

The construction investment is 8 billion USD and the entire project will be 58 billion USD. Italian-Thai was granted a 60 to 75 year land concession from the Myanmar government for this project. As Joseph Stiglitz argues, international corporations are the symbol of globalization. If the local government is weak, a developer can make more and more profits. If central policy

1) Joseph Stiglitz : *Making Globalization Work* (Burmese version)

is weak and ill conceived, a development project will become a destructive project. So central policy, law, and local government action is very important. Currently, central policy and the law don't match the local situation. So what is the central government's idea and policy around development?

Special Economic Zones in Myanmar Background

In Myanmar, the special economic zone (SEZ) concept was adopted from China. Former Prime Minister General Than Shwe visited China's SEZ in Shenzhen in September of 2010 and said that his country could learn from China's experience of rapid economic reform and expansion.²

Myanmar's former military government had four political purposes, four economic purposes and four social purposes. Now, the new government elected in the 2010 election is emphasizing one economic purpose above these twelve purposes: "Building a modern industrialized nation through agricultural development, and all-round development of other sectors of the economy." The Dawei project will become one part of the country's industrial development.

In Myanmar, however, most people live in rural areas and do farming. If the government focuses on industrialization, that will affect people's sustainable livelihoods. If local governments can't implement the central government's policy and law, the country will lose not only livelihoods and but also benefits, opportunities and living security. All of the country's stakeholders are important.

Regional Background

The Nabulal region in Dawei is a historical region. One of the famous religious images is Buddha's footprint. Even though the academic historical record is unclear, the local people believe in it very strongly. We find many cultural sites such as four old ancient cities and the paraphernalia of Pyu People about the two miles from Nabulal area. The local language is also the original dialect of the Dawei language. The accent of Nabulal people is very different from that of other Dawei people.

In this area, the main livelihoods are farming, gardening and fishing. Most people plant long-term trees such as rubber, cashew nut, beetle nut and coconut trees. It is very important for them and their next generation. If the ITD goes ahead with this project, all the local people will face many challenges to their livelihoods. The region is green with gardens and paddy fields and blue with the sea. Nabulal is about 18 miles from Dawei. The Dawei deep sea port and special economic zone area is in the Yay Phyu Township and Lone Long Township.

Project Background

Originally, the whole project was to affect 21 villages: 32,274 people and 3,977 households. The government did not inform the people about the project. One parliament member from Yay Phyu Township asked about the Dawei Deep Sea Port and Special Economic Zone. In the

2) <<http://www.bur.irrawaddy.org/index.php/articles/2-articles/5440-2011-01-08-08-45-14>>

answer, the Deputy Minister for National Planning and Economic Development Kan Zaw said that seven villages will have to be moved for this project.³ The villagers have now been informed of the relocation by the company and the government but the local people did not agree on the compensation for their gardens and trees.⁴ The local people proposed proper compensation for their trees. ITD transferred the compensation process to the government. The locals don't want the government to do the compensation process because they know that corruption will happen. But ITD and the government are on the same side. It is crucial to monitor their strategic abuses.

Project Information

The Dawei Deep Sea Port (DDSP) and Special Economic Zone (SEZ) is the first special economic zone in Myanmar. It is about ten times larger than the Map Ta Put SEZ in Thailand.

The project has put the silent and peaceful coastal region of Dawei on alert. What will happen? Most people don't know. The government and the Italian-Thai Development Company (ITD) did not provide clear and detailed information before the project began, and they still have not provided this information.

The land concession is 75 years. ITD granted concessions to develop the following projects:

- » Deep Sea Port
- » Industrial estate including heavy industries such as: a steel mill, an oil refinery, a petrochemical complex, a fertilizer plant, a power plant, and other utility services.
- » Cross border road and rail link with connecting transmission lines
- » Township for residential and commercial development.

Currently, the temporary small port on Pantininn beach is available for use.

According to an ITD report in May of 2011, the Dawei-Phu Nam Ron road was 90 percent completed. They have a plan to build a road to Bangkok.⁵ Construction will take place over 10 years. At first they estimated that the infrastructure investment would be 7,878 billion Kyats (10.1 million USD). ITD will invest 54 percent of the total infrastructure investment. Now they expect that the first phase will cost 8 million USD.

The Conceptual Plan of the Project

In the conceptual plan, the Dawei Deep Sea Port will become the best gateway to navigation routes. Goods from Thai exporters are currently shipped from the Gulf of Thailand, around Singapore and through the Malacca Straits before heading west, but it is hoped that a road and rail link to Dawei will end this costly detour. Dawei would also provide a "short cut" for crude oil coming into Southeast Asia from the Middle East, according to an ITD presentation, which also

3) See Appendix A for full statement in Parliament by Kan Zaw.

4) See Appendix B for chart of compensation for confiscated property.

5) See Appendix C for a history of the MOU concerning road construction

envisaged a train link to Kunming in southwestern China.

Plans for the 250 square kilometer (100 square mile) site include a steel mill, fertilizer plant, coal-fired power station and oil refinery -- potential boons for Myanmar's energy-hungry neighbors. In Thailand, the similar Map Ta Put Special Economic Zone faced a strong civil society movement against it. Sean Turnell, an expert on the Myanmar economy at Macquarie University in Sydney said that lack of regulation might help lure investors nervous about doing business in Myanmar.⁶

When we analyze the rules and regulations in Myanmar, the Myanmar and Dawei SEZ laws are still weak and unclear about environmental, social and health impacts in the community. These laws just encourage investors. There is no environmental law in the justice system.

Stakeholders in DDSP & SEZ

Key Stakeholders

Italian-Thai Development	Max Myanmar
Dawei Development Company (ITD and MM collaboration company)	

Subcontractors:

Original Group Co. Ltd	Shwe Su Pan Co. Ltd
Kanaung Asia Co. Ltd	Suntac Co Ltd.

The Myanmar government is also a key player because the Dawei DSP & SEZ supporting groups have to implement the project according to central government policy at the community level. Therefore, the attitudes of the DDSP & SEZ supporting groups are very important. If these groups are corrupt or misuse their power, the community will face many problems.

According to The Nation, ITD will try to ensure the funds from international financial institutions this year (2011). The company is looking for partners to invest in Dawei Development and expects to sell a 49 percent stake to investors by the end of this year.⁷

Stakeholders in EIA and SIA Process

EIA & SIA for Projects and Responsible Consultants

DDSP & SEZ:TEAM Consulting Engineering and Management Co., Ltd	Road Link to Thailand: Chulalongkorn University & Tesco Co., Ltd
--	--

6) Fears over Myanmar deep-sea port plan, By Alex Delamare (AFP) – Jun 4, 2011, <http://www.straitstimes.com/BreakingNews/SEAsia/Story/STIStory_676459.html>

7) See Appendix D for a list of other potential stakeholders.

According to an interview with ITD's Dawei project coordinator, the EIA and SIA processes will start very soon. In theory, the EIA and SIA should be conducted and made public before project construction begins, but the agreement has been signed and the project has started already. The road to Thailand has also already been built. This process shows that the EIA and SIA will only be for show and to align with the law. In the middle of November 2011, one community SIA was made public, but it is not technical and not perfect. This community SIA shows the way of life in this region.

Legal Issues

The Myanmar Special Economic Zone Law and Dawei Special Economic Zone Law were published on 27th January, 2011. Most analysts say that Myanmar legal's system is weak because legislation, administration, the judicial system, media were all under the military government until early 2011. These Myanmar and Dawei SEZ laws cannot cover environmental and social impacts in great detail. These laws only say that the companies have to cover environmental and social impacts, not the government.⁸

The Current Situation in Nabule and Dawei

Even through the law requires that the companies give compensation to the local people, the ITD and Management Committee did not follow the law. In reality, the affected people did not agree to their proposed compensation and did not receive it within the right time frame. In the compensation process, the government and Max Myanmar are the key actors. They tried to force the local people to give up their land for an improper price. ITD is very skillful in hiding its role in the compensation process.

"ITD is not too bad, but the government and Max Myanmar are bad," said a local vendor in Htaig Gyi Village, Nabula region. The local Theninthayi parliament members did not pose questions to the national parliament early enough. When they asked the parliament about issues such as resettlement and preservation of the ancient city, the central government had already made their decisions. Some land has already been taken, but the affected people have not yet received compensation.

The local people don't clearly understand about the project. They know only that the Special Economic Zone is not good. The affected people face a lack of information. In my experience, neither the Forestry Department in Dawei nor the local Forestry Ministry answered my questions related to the resettlement area. The local people said that the resettlement area is in the national forest area and the soil is not suitable for anything except cashew nut trees.

The DDSP and SEZ supporting group forced the local people to move. U Tin Maung Swe, Chairman of the DDSP and SEZ supporting group, said in local meeting in July, 2011, "You all have to move from your villages. Many industries will come to your region. You all have to face many health problems." U Tin Muang Swe used this information to get the local people's agreement; before the statement, some villages refused to move. After they heard U Tin Muang Swe's

8) For specific laws relevant to DDSP & SEZ, see Appendix E

words, they agreed.

The Potential Impacts of the Project

The first impact is relocation. The planned project area is 250 square kilometers (61,775 acres), and 19 villages will have to be relocated. 23 cultural and religious buildings, 21 schools, 3977 families and 32279 people will be relocated. The government and ITD will also take many gardens and farms.⁹ The government and ITD did not release detailed information: Where? When? How? How much compensation will people get? The villagers know nothing.

Now some villagers do not maintain their gardens. They feel depression and uncertainty. They believe that ITD and the government will take their land one day soon. That is the reason most villagers have been affected psychologically. In the future, the local people will face negative social, environmental and health impacts. Myanmar does not have strong environmental laws. Somchet Thinaphong, who is managing the project for ITD, said that now the environmental assessment for the Dawei project is underway. It will take one year to complete.¹⁰ But ITD announced that the project will start in 2012, before the environmental assessment is complete.

Potential Social Impacts

A peaceful community has their land, their life and their culture. If they have no land, they have no life, because their life depends on their land and plantations. If they have no life, their culture and traditions will be lost.

A local fireman expressed: “If we have no land, there will be no village. So, no people. No culture.”

In general, Dawei people are suspicious of ethnic Burman people. Now all of sub-constructors are Burman people. Affected people are ethnic Dawei people. ITD and those companies do not follow the law and central policy. If they continue these kinds of activities, there will become conflicts between Dawei people and Burmans.

Another social problem is migration. If people have no land, they will move to Thailand more and more. Currently many Burmese migrate to Thailand to work. So this migration also will affect the community.

On several occasions, Thai workers in the project area tried to initiate sexual relationships with local women. In the Mitta area (along the road link to Thailand), three Thai workers married local women but later left without taking any responsibility.

The Karen National Union (KNU) discussed several times with ITD about this project. But they did make the information they discussed public. The KNU has forbidden all ITD vehicles from crossing their region since September of 2011. In January of 2012, the KNU announced that if ITD does not conduct an EIA and an SIA, they will not allow the construction of the road to Thailand. If the KNU and the government army fight because of this development project, it will

9) Bahtoo news Dawei regional special Issue 5, Page 38,39

10) Fears over Myanmar deep-sea port plan, By Alex Delamare (AFP) – Jun 4, 2011, http://www.straitstimes.com/BreakingNews/SEAsia/Story/STISStory_676459.html

cause many unexpected negative social problems.

Community Response and Participation

In this region, the main livelihoods are gardening, farming and fishing, but many people have gone to Thailand as migrant workers. The community is so silent. The first reason for this is that the community has no experience in demonstrations or movements for their rights. The second is that they lack information because the ITD and the government did not inform them of the details of the project. The third is that no NGOs have tried to share information with the community about this project. However, some CBOs have tried to improve the role of media and civic education. A grassroots community-based organization, Dawei Development Association (DDA), has helped the local people to advocate for their rights. They have distributed weekly newspapers to local people. These CBOs also have used social networking media, primarily Facebook, to share information.

The DDA tries to raise awareness about this project. One of the local CBOs did research on the potential affected area. Many people who live in the urban areas of Dawei believe there will be positive changes from the project. But most people in the affected areas were not happy. They are not sure if they want the project or not. But they know they do not want to leave their villages. The villagers do not know what they should do. The local people face depression and uncertainty. They feel angry. At the same time, the local people hope for some positive benefits from this project such as job opportunities. But the payment is low and the workers must work 10 hours per day. ITD pays only 3500 Kyats (approximately \$5 USD) a day. In this region the current payment is 3500 to 5000 Kyats a day for a general worker. ITD does not give overtime and the pay date has been later than Thai workers' payment by about two weeks. The 70 local workers proposed to review the payment process, so they could be paid at the right time and reduce their working hours. The local authorities mediated between the workers and ITD. The general workers from upper Myanmar migrate to Dawei. ITD and subcontractors' payment is low for local general workers. But the payment is higher for migrant laborers from upper Myanmar. So, ITD shows a lack of concern for the local laborers.¹¹ Now ITD is doing construction with over 200 Thai workers and over 530 Myanmar workers.

ITD and the government discussed compensation with the local people. But they have not yet reached a proper agreement with the local people because compensation is very low. Most local people plant long-term trees like rubber and cashew trees.¹²

These trees represent their life, their livelihood and their future; they cannot be compensated for. In this situation, the resettlement and compensation is all unclear. But one local journalist said that 7 villages will have to be the first to resettle. Some local CBOs are preparing to monitor these 7 villages.¹³

The Karen community that has been impacted by the road link to Thailand is stronger than

11) Bahtoo news Dawei Regional Special Issue 7, Page 1,2,3

12) Personal interview, On Phone, July 20,2011

13) Personal interview, On Phone, August 15, 2011

the Nabule community that is affected by the DDSP and SEZ. The Karen community set up a 12 village committee to share information and to lobby the government. Now this committee sent a complaint letter to ask for compensation for the affected people. But the local government has not yet solved this problem.

"If the local government cannot solve our problems, we will send a letter to the President,"

- Member of the 12-village committee

On 15 th December 2011, the Dawei Development Association (DDA) held a press conference in Yangon. They released a statement. On 7 th January 2012, the DDA sent open letter to Thai Prime Minister Yingluck Shinawatra. "We don't want this project. They want it. So don't do it in our region. Do it in their region," a community leader in Ya laing Village said.

Analysis and Conclusion

Currently, the central government is changing its policy and trying to build an industrialized nation. However, the local government and community are not ready for this development project. Most villagers don't know their rights or understand democratic culture. Myanmar land law and the Dawei Special Economic Zone law is still weak. There currently is no environmental law.

The government is trying to build the nation with the wrong development concept. Development should be to develop the nation. The local government has no capacity to handle the huge development project. The local community doesn't know their rights. The administrative structure of the Dawei Special Economic Zone is a top-down structure. This administrative structure means that the government and investors are not concerned about the local people. They will do this project without regard for the local people's ideas, participation, or decisions.

"They should discuss the project with the local people. They don't know the geographical or traditional situation in this region. They never discuss with us. They take our land like thieves in the night time,"

- Ma Yin Gyi villager

A development project cannot succeed without consideration for the local people's ideas and desires, because the local people know the value of their land, their farms, and their plantations, and how the project will affect their region and their lives.

The Myanmar government will get tax revenue from the Dawei project. Myanmar is not able to provide material such as heavy machinery, foods, and vehicles. Since Dawei is only 350 km from Bangkok, ITD will bring everything they want for the project from Thailand. The consumption rate will be high in Thailand. ITD will use Dawei's natural raw material such as sand, stone, water, forest and land. They will operate the project and will make money from these resources. Dawei will be left with pollution.

According to Dawei Special Economic Zone law and the central government's answers in parliament, the compensation and resettlement process and job opportunities are good. In reality, ITD and the local government don't follow the law and central policy.

If the local government does not follow the central policy and the law, the local people will fail to gain job opportunities, compensation, and resettlement. Development should be for bettering the lives of the people. Development should not only be for money. Development projects should not damage local people's lives and should not be destructive to their region and livelihoods.

Appendix A

U Kan Zaw's Statement in Parliament Related to DDSP & SEZ

“Seven villages- Nyaungbinseik village of Launglon, and Hteingyi, Pradat, Leishaung, Mayingyi, Mudu and Kalouthta villages of Yebyu Township-include in Dawei Special Economic Zone and will be displaced; Hteingyi, Pradat, Leishaung, Mayingyi and Mudu villages will be relocated to Bawa village, Nyaungbinseik village to Pantinninn village and Kalouthta to nearby area; Region government, Dawei Special Economic Zone Supportive Group (temporary) and ITD Co. are coordinating to reimburse villagers for loss of annual and perennial crops plantations at current prices; ITD Co. have been directed to give back the villages enough land for accommodation and agriculture in new settlement, to reclaim lands for farming and growing perennial crops, to provide them with monthly cash assistance to families in the interval while they are making no profit from farming; to relocate them step by step by allowing them to continue farming in old place while starting crops plantation in new settlement, to help the families start farming if they live on earnings from farming and the crop is in season, to provide monthly cash assistance before the start of next season if the crop is out of season so as to avoid suffering from lack of income, to allow families who earn livings from perennial crops to grow the same crop in new plantation and then displace there when they are able to make profits from the plantation, and to provide guaranteed monthly and annual cash assistance if they are to displace earlier; coordination has been made to complete construction school, hospital, clinic, bazaar and religious edifices in new settlement at the time of displace; two-story RC buildings with CI-sheet roofs will be built for displaced families; and plans for convenience of socio-economic status of displaced villagers are included.”

The Deputy Minister for National Planning and Economic Development U Kan Zaw answered the queries on economic sector raised by four Hluttaw representatives in 22nd Oct, 2011¹⁴.

14) Second regular session of first Pyithu Hluttaw continues for 39th day. Ten questions answered, one new proposal submitted, Oct 22 ,2011 <http://www.myanmar.com/newspaper/nlm/index.html>

Appendix B

Compensation for Confiscated Homes and Trees

Category	The price of the house	The size of the house
A	20 million kyat (28571 USD)	60 feet x 80 feet
B	15 million kyat (21428 USD)	60 feet x 60 feet
C	10 million kyat (14285 USD)	60 feet x 40 feet

Type of Tree	ITD's price	Local people's proposed price
Rubber	15 ,000 kyat (20 USD)	180,000 kyat (250 USD)
Cashew	30,000 kyat (40 USD)	105,000 kyat (150 USD)

The life of a rubber plant is 30 to 70 years. 220 rubber plants are planted in one acre.

The life of a cashew tree is 30 years. 70 cashew plants are planted in one acre.

Appendix C

History of MOU between Myanmar government, Thai government and ITD

A Memorandum of Understanding (MOU) was signed between the Government of the Kingdom of Thailand and the Government of the Union of Myanmar to develop the Dawei Deep Seaport and Road Link to Bangkok on May 19th, 2008. An MOU was signed between ITD and the Myanmar Port Authority, Ministry of Transport on June 12th, 2008. The Myanmar government granted ITD the sole right to develop, implement, and operate the Dawei Deep Seaport and Industrial Estate Project.

The Framework Agreement was signed between ITD and the Myanmar Port Authority, Ministry of Transport on November 2nd, 2010 for the development of the Dawei Deep Sea Port, Industrial Estate, and Road and Rail Link to Thailand on a BOT (Build Operate Transfer) basis.

Appendix D

Potential Stakeholders

There are many potential stakeholders in this project. It is very complicated, because the project is just preparing steps now, and they will begin construction in 2012. I cannot find who is behind the ITD until now. But it is possible to guess and analyze according to the news.

On September 19 The Nation, an English-language newspaper based in Thailand, reported that PTT will invest 4 billion USD for a coal power plant project. According to The Nation, the Electricity Generating Authority of Thailand (EGAT) negotiated a power purchase agreement

with ITD. Ratchaburi Electricity Generating Holding and Electricity Generating PCL are also investing in other power operators.

ITD President Premchai Karnasuta told The Bangkok Post newspaper that state-owned Thai companies, such as EGCO Group, as well as Japanese and Chinese power companies, have already expressed an interest in the venture.¹⁵

Siam Commercial Bank will be involved as financial advisors and BAKER & MCKENZIE Company will be involved as a legal administrator for the Dawei Project.¹⁶ The Asian Infrastructure Fund, which mobilizes capital from central banks, could be a major financing source as the project will be a focus of Asian integration, Areepong Bhoocha-oom, permanent secretary of the Finance Ministry, said.¹⁷

Appendix E

Laws Relevant to DDSF & SEZ

Regarding job opportunities, Article 34 of the law says:

“The developer or investor shall bear the expense of transferring and paying compensation of house, building, farms and gardens, orchard fields and plantations on land within the Dawei Special Economic Zone permitted by Central body if these are required to be transferred. Moreover, he shall carry out to fulfill the fundamental needs of persons who transfer so as not to lower their original standard the relevance management committee shall coordinate as may be necessary for the convenience of each works.”

Article 50 states:

In the Dawei Special Economic Zone, the investor:

- » In employing citizen skilled workers, technicians and staff for experience works, shall employ at least 25% of citizens at the expiry of the first five years, 50% at the expiry of the second five years and 75% at the expiry of third five years from the commencement years of the business.
- » Shall arrange and provide necessary training for the improvement of the skill of the employee and staff in appointing under sub-section(a);

15) Pichai: Southern landbridge plan deserves a fresh look , <http://www.platts.com/RSSFeedDetailedNews/RSSFeed/Oil/7797797>

16) Dawei project : Investment opportunity in the new regional trading and industrial hub, http://www.itd.co.th/en/news_13June54.php

17) Dawei financing deals imminent, ITD looks to sell stakes to investors, 9/06/2011, <http://www.bangkokpost.com/business/economics/241310/dawei-financing-deals-imminent>

Potential Impacts of the Pak Chom Dam on Local Food Security in Loei Province, Thailand

by Tipakson Manpati

Ms. Tipakson Manpati is Alumni Coordinator at EarthRights International's Mekong School, working with program graduates to campaign for social and environmental justice in the Mekong region. She has experience working as a journalist with Prachadhrama News Net (PNN) and a writer for Horizontal Media Project (Local Talk) covering human rights and environmental issues.

Summary

Local food security is a basic part of communities' livelihoods along the Mekong River. The River not only provides food security for local communities, but also contributes cash income for family expenses in the modern world and circulates in the local and national economies. This research was conducted from September to October of 2009 in Kok Wao village, Loei province, Thailand. The research focuses on the potentially negative impacts of the Pak Chom Dam on people's livelihoods and food security. Considering the fact that this large scale dam is being purposed to provide electricity to meet economic growth demands, the project is not cost-effective considering potential losses to biodiversity in the long term.

Ultimately, this research aims to raise people's awareness concerning the negative impacts this large scale hydropower project may have and to convey the message to the government and stakeholders in all levels to stop destructive projects on the Mekong River. In addition, the author aims to promote people's rights to information, participation and decision making. Furthermore, it is hoped that the data provided will draw public attention to energy sources that are friendly, peaceful and sustainable for the environment and people's lives.



Introduction

Mainstream Mekong Dams Threaten Local Food Security

Food is essential to ensure people's fundamental right to life. The rich Mekong is a major source of natural food that 60 million people in the region rely upon for their livelihoods. It is estimated that there are 1,500 different fish species. There are several kinds of wild vegetables and edible plants found within the Mekong ecosystem. The Mekong flows according to its natural geography and each season transports sediment for agriculture on sandbar islands and riverbank areas. In addition, food can be converted into income that supports families and contributes to local and national revenues.

Today, the natural fertility of the Mekong is threatened by many large scale dams, so-called "development projects," for hydropower generation to support economic growth. The first dam on the Mekong was built in China in 1996. Since the first dam began operation, at least 2 more dams in China have been finished and have started to operate. There are many additional dam projects under construction and many plans to build more dams on the Mekong mainstream in China. Also, there are many plans to dam the lower Mekong mainstream that have been proposed to extract hydropower from the river.

The idea of building large-scale dams on the lower mainstream Mekong has been proposed since the 1950s. The idea was originated from the Mekong Committee, a UN-funded organization on Economic Commission for Asia and the Far East (ECAFE),¹ established to plan a development scheme for the lower Mekong countries after World War II. In the 1960s the committee launched plans for a cascade of seven large-scale "multi-purpose" dams on the lower Mekong mainstream. The plans, which were proposed as part of the Mekong Committee's indicative plan

1) The Mekong River Commission (MRC),
http://www.mrcmekong.org/about_mrc.htm#nmc

in the 1970s, aimed to provide hydroelectricity, flood control, irrigation and improved navigation.²

However, the proposed dams on the Mekong River were put on hold because of the cold war situation in Indo-China region. After the cold war, the Mekong Committee became the Mekong River Commission (MRC), and revived the old plans for the lower Mekong mainstream dams.

The Mekong Committee's plans to promote large scale dams on the lower Mekong mainstream were taken up again in 2007 when the governments of Thailand, Lao PDR and Cambodia granted approval to Chinese, Thai, Malaysian, Russian and Vietnamese companies to conduct feasibility studies on at least 11 projects: Pakbeng, Luangprabang, Sayabouli, Paklay, Sanakham, Latsua and Donesahong in Laos, Ban Koum and Pakchom along the Thai-Lao border, and Strung Treng and Sambor in Cambodia.³

These proposed dams are very controversial within civil society groups in the Mekong region as they will cut the main river into 11 sections. The dams will block the natural free-flow of the River and affect local food security.

Pa Mong to Pak Chom: Tricks in Hydropower Discourse

While there are many plans to build dams on the lower Mekong mainstream, Mekong dams upstream in China have been causing problems to communities downstream. These impacts include unprecedented flooding in the rainy season, unseasonal fluctuations, riverbank erosion, and declines in fish species as well as riverine biodiversity. Many Mekong communities have been affected and view the large scale dams on the Mekong as destructive energy projects because they generate electricity to the detriment of the environment, biodiversity and local livelihoods.

The Pak Chom Dam currently being planned on the lower Mekong mainstream in cooperation with the Thai and Lao governments has been revived from the old plan for Pa Mong Dam. The Pa Mong Dam was originally proposed in the Mekong Committee's 1970s Indicative Plan. However, the dam was put on hold due to the war in Indochina, the project's massive budget, and potential negative social and environment impacts.⁴

At present, the Pak Chom Dam project has replaced Pa Mong Dam, which was planned in the past but could not be built. Thailand's Alternative Energy Development and Efficiency Department proposed to build Pak Chom Dam based on hydroelectricity generation as an alternative electricity source in response to increasing oil prices. In 2005, the department hired Panya Consultant Company and Macro Consultant Company to conduct a preliminary study on the potential cascade dams on the Mekong mainstream. In February 2008, the companies finished a pre-feasibility study and initial environmental assessment of "hydraulic cascade weir projects"⁵ on the Mekong and highly recommended Pak Chom and Ban Koum as worthy projects for investment.

2) TERRA, Background to the Mekong mainstream dams, September 2007

3) http://www.terraper.org/key_issues_view.php?id=13

4) TERRA, Background to the Mekong mainstream dams, September 2007

5) Feasibility study and initial environment examination document by Panya Consultant and macro Consultant, February 2008

The Thai preliminary study and initial environment assessment of hydropower projects on the Mekong calls the Pak Chom project a “hydropower weir” instead of a dam. Playing with words is a way to distort the real meaning of the dam as a big project and make it look like a small scale project. This is a trick by the government to control discourse about the dam and to shield people from the truth. The author believes that this could also be a way to delay the people’s willingness to take action against the project before any operation takes place that makes it more difficult to challenge.

Also, limiting the flow of information and making up bureaucratic conditions to inhibit access to information causes belated participation of local people in project planning. In the Thai context, many dam projects have been built without full participation and people-oriented decision making. There are many affected communities such as Pak Mun, Rasri Salai, Huay La Ha in the Northeast of Thailand struggling against dams and negative impacts that have led to environment destruction and livelihood collapse. For over 30 years community movements have raised issues around dams and it has become a more and more controversial issue in Thai society whether dams are worth it for the economy or worsen lives and the environment. However, it is shameful that the Thai government still keeps looking to build more dams, claiming them as ‘alternative energy’ and ‘clean energy’ for power security and economic development.

Pushing Pak Chom Dam Silently

According the feasibility study and initial environment assessment by the companies, Pak Chom Dam is a suitable project for hydropower development as an alternative energy source for these reasons:

- » Less impact from the project
- » The project will promote economic development both in Thailand and Lao PDR
- » The project will reduce out-sourced energy and carbon emissions
- » The project will increase people’s incomes in agriculture, tourism and fisheries

The Pak Chom Dam project is likely to be a part of ADB’s GMS Power Grid within the Greater Mekong Sub-region program. The GMS Power Grid plan includes Regional Power Interconnection and Power Trade Agreements to promote hydropower projects on the Mekong mainstream. In addition, there are other institutions involved such as the World Bank, the Association of Southeast Asian Nations (ASEAN), the Japan Bank for International Cooperation (JBIC), Agence Francaise de Development and the Swedish International Development Agency (SIDA).⁶

The proposed Pak Chom Dam’s capacity is 1,079 MW, with an estimated cost of 69,641 billion Baht. The dam site covers area in Thailand and the Lao PDR. Potentially affected villages are Huay Kob, Kok Wao in Had Kam Pi sub-district, Pak Chom district, Loei province and Huay Hang village of Mueng Sung town in Vientiane province.

6) Trading Away the Future: the Mekong Power Grid, International Rivers Network

The dam would create a reservoir to store water at 192 meters above sea level, which would submerge 4,127 Rai (1 Rai = 0.16 Hectares) in both Thailand and Laos. The dam would have 14 gates (20x25.5 meters), 2 boat channels with a capacity for 200 ton boats (20x200 meters), a hydropower station with turbines to generate 1,079 MW, and fish ladders.

Regarding the potential impacts of the dam from flooding, there is a plan to mitigate its effects on communities such as water-break projects, rebuilding and increasing the height of the road surface, construction of a water-pump station, promoting upland agriculture, aquatic farming, tourism and setting up an electricity development fund for communities.⁷

Since the Pak Chom Dam was proposed, and the pre-feasibility study and initial environmental assessment were finished in February 2008, the dam project process has not been clear. There is not much information about its process that has been disclosed. However, in Kok Wao village alone many unexplained marks have been made throughout the village, which are likely linked to projects concerning the dam's mitigation plan.

Villagers interviewed said that the local government plans to construct water-breaks along the Mekong River in Kok Wao village to prevent river bank erosion. However, details about the water-break plans such as its planning processes, budget, blueprints and organization or companies involved have not been disclosed and explained clearly to the villagers.

Whether or not the marks relate to the dam project, the villagers have the right to access to information and to be informed clearly and comprehensively. This is a fundamental process to achieve full democratic participation in decision making for public benefit in any development project.

Food security in Kok Wao village

Searching for Food, Searching for Life

Kok Wao village is located along the Mekong riverside. According to local storytellers, the village was settled up to 200 years ago. Old people in the village said that their ancestors began traveling in search of food. They moved from Kaen Tao village in Saiyaburi province of Laos to a new settlement near Kaeng Jan rapids in the Mekong River where they heard of "a place of fish" from traders who described the abundance of fish in the rapids area. They crossed the Mekong River to the opposite side and established a village near Kaeng Jan rapids.

Grandpa Bu joined five other elderly residents in a focus group discussion on Kok Wao's history. He shared stories about the village history as passed down over the generations.

7) Feasibility study and initial environment examination document by Panya Consultant and macro Consultant, February 2008



“In the past, it was difficult to find food for a living in Kaeng Tao. So the villagers moved to the Kaeng Jan area since they heard about the abundance of fish from travelers along the Mekong who brought and traded commodities such as salt and rice. In our grandparents’ time, there were a lot of fish jumping up in the rapids area. The amount of fish was massive. People would dip a strainer into the water and pull it out full of fish,”

- Grandpa Bu

Originally, the village was named “Kok Bao”. The name is comprised of two words. “Kok” means a whirlpool ecosystem in the Mekong River. “Bao” refers to a local gold panning site along the Mekong River.

Several decades later, a frontier soldier and teacher who came to teach in the village was put in charge of population census registration. He proposed “Kok Wao” as a new name for the village. The name is based on a true story about a district chief and his officers who traveled by boat on the Mekong near Kaeng Jan rapids. The boat almost sank when passing the rapids and this event was talked about in town, which led to the name “Wao,” which means to talk or speak about. Since then, the village was officially named Kok Wao. However, the old name, Kok Bao, is still known and recognized by local people and nearby villages.

Geography and Food Security

Kok Wao village is in Had Kam Pi sub-district, Pak Chom district, Loei province. At present, there are 95 households with 391 people. Most of the villagers hold Thai citizenship. 4 people who have intermarried into the community are non-Thai citizens. The village geography includes riverside and mountainous areas totaling 2,500 Rai. Some parts of the mountainous area belong to the Pa Pu Khae Khaew and Dong Pak Chom forest conservation area, which covers 853,500 Rai in Pak Chom and Chiang Kan districts.⁸

The villagers practice their livelihoods depending on the natural resources that are provided by the local geography.

Riverbank land for cultivation is limited. From mid October to May villagers are able to make use of riverbank areas for gardening, depending seasonal fluctuations in the water level.

Most of the villagers are at least self-reliant in basic food from backyard gardening along the riverside and hillsides. 80% of households depend mainly on natural food from the Mekong river ecosystem such as fish, edible insects, animals and vegetables along the riverbanks, along with wild

8) <http://www.moc.go.th/opscenter/ly/data1.htm>

food from the mountainous ecosystem such as mushrooms, bamboo shoots and wild animals and insects rather than buying food from market. Another 20% of households depend more on food from the market together with some natural food from the Mekong and mountainous ecosystems.

Fishing in the Mekong is a common livelihood for villagers. 80% of households catch fish for a living and 20% catch fish for sale. Out of 95 households, 30 families have their own fishing boats. The village fishers use different types of local fishing gear in accordance with seasonal fluctuations, sub-ecosystems and fish species in the Mekong. There are at least 32 types of folk fishing gear that are used to catch fish in the Mekong. However, some types of local fishing gear are no longer popular and have abandoned for over 10 years because of changes in the ecosystem such as Nam, Jan Bung, Lob Bung, Tong, Tao, Tum Sa.

The folk fishing gear that have been abandoned over the past few decades is a signal of the changes in the Mekong ecosystem that have affected local fishers. Apart from worsening environmental conditions, the changes are a result of many development projects that are operating and under construction on the Mekong mainstream. Some people in Kok Wao village and villages on the Lao side now catch fish in a destructive way by using explosives and electrocution. When there is a lack of community commitment to rules or regulations to enhance fishery sustainability and to protect the international river, local food security will worsen because of inappropriate fishery management.

In the past, the Mekong was not recognized as a territorial body of water. Opposite Kok Wao village on the Lao side of the river was a large forest in a mountainous area that was not part of any village settlement. The villagers were able to cross the river to do highland rice cultivation and wild animal hunting as well as wild food collecting. For over 50 years the villagers have not crossed the river to make their living due to the political conflict and military presence in Laos. The villagers from Thailand stopped cultivating Laos as the concept of state territory became more engrained. Since then, more land in the mountainous areas on the Thailand side has been cleared for the cultivation.

Initially, cultivation in the mountainous areas was mostly for highland rice fields. At present, every household makes use of highlands for farming all year round with different kinds of plants and crops. More villagers are also practicing commercial agriculture. It is challenging for them to avoid using chemical fertilizers and pesticides in order to pursue a sustainable livelihood in the long term.

Food from the Mekong

There are 8 different types of sub-ecosystems in the Mekong River in the Kok Wao area that provide an abundance of fish and riverine animals. Thanks to these unique sub-ecosystems, not merely Kok Wao village, but also nearby villages are able to access natural food all year round. The villagers can get income from Mekong fish and other riverine animals such as shrimp, crabs, frogs, crickets, etc. The food from the Mekong also supports the local economy by distributing and exchanging income at 3-4 levels in the food market.

For example: 1) Wild-capture fisherman; 2) Local middlemen, fish-traders; 3) Restaurants, wholesale markets; 4) Processed fish products such as fermented fish and dried fish.

The river ecosystem also includes sandbar islands and riverbank areas for local gardening during the dry season when the water level decreases around mid October to May. There are different kinds of plants that the villagers cultivate on the river bank and sandbar islands.

Food in the Mountainous Ecosystem

Local mountain ranges, namely Phu Pa Hung, Phu Yai, Phu Huad, Phu Pa Hae and Phu Pa Wan, provide 19 tributary streams for the village. 15 of those streams provide water for agriculture and cultivation all year round. Three streams only contain water in the rainy season. The streams do not merely supply natural irrigation for agriculture and cultivation purposes; they also provide natural food and herbs for villagers including fish, mountain crabs, mountain frogs and many eatable wild plants that grow alongside the streams. The mountainous ecosystem also provides wild food and herbs such as mushrooms and bamboo shoots as well as wild animals and insects that the villagers hunt and collect for food and income, such as squirrels, shrews, masked palm civets, wild pigs, wild fowl, snakes, and more.

Apart from the natural food in the mountainous areas, people gain income all year round from these areas due to the quantity and capacity of land for intensive economic crop cultivation and plantations.

At present, the villagers have cultivated many plants and crops in the mountainous areas which can be categorized into four main groups as follows:

- » Rice fields: highland rice
- » Gardens: tomatoes, eggplant, lemongrass, basil, chili, etc.
- » Orchard fields: pomelos, tamarind, lichi, langan, rambutan, mangos, guava, kraton
- » Plantation crops: corn, cassava, papayas, bananas, black beans, rubber trees

Findings

Difficulties in Accessing Information on the Pak Chom Dam

Although the Thai feasibility and initial environment assessment of the Pak Chom Dam were finished in February of 2008, they lack public participation and transparency. The government and companies involved in the dam project monopolize information and circulate it only among selective stakeholders such as village leaders, village committees and local government officers.

From the author's observations, ordinary Kok Wao villagers gained some critical information about the dam from NGO networks. In contrast, the village leaders, village committee members and local government officers that were invited to participate in meetings or seminars gained optimistic information about the dam from the government and companies. Concerning the monopoly on information, the villagers are supposed to be able to learn information from their representatives. However, many villagers said that the village leaders and committee members did not talk in detail about the dam and none of them held discussions about the information they

had gained.

"I heard there is a plan to build a dam, but I don't know the details. It is necessary to inform villagers of the details. They only say that we will have to move our homes, temple and school. I wonder why it will be like that. However, they don't explain in detail the benefits and losses. We want to know the details,"

- Lung Fern (September 19, 2009)

This monopoly on information can lead to a one-sided perspective rather than comprehensive views. It is not possible to obtain full public participation in decisions when people are lacking comprehensive data and have little access to information. This is also an obstacle for NGOs in terms of setting a strategy to work with affected communities. It is challenging for NGOs to monitor the dam issue while also promoting villagers' awareness so they can protect their rights in the face of destructive projects.

Potential impacts of Pak Chom Dam on Local Food Security

Current Impacts on Food Security from Upstream Mekong Dams

For over a decade, large-scale hydropower projects built on the upstream Mekong in China have been very controversial for causing phenomenal impacts to the Mekong ecosystem as well as social problems. There is significant proof of how large dams are linked to impacts on the environment and people's livelihoods such as unseasonal and unprecedented floods, unseasonal fluctuations, river bank erosion, decreased quality of water in the Mekong River, fish species and fish population declines, and even worse, fears that endangered fish such as the wild giant catfish may disappear. The following are villagers' voices and their perceptions about changes in the Mekong.

"I earn 4,000-5,000 Baht/year from fishing. I fish to eat first then I sell the rest. I don't have to buy food from the market. But today, it is more difficult to catch fish. Many kinds of fish have disappeared because people use electricity and explosives to catch fish."

- Grandpa Bee, fisherman (September 18, 2009)

"Nowadays, fish in the Mekong River are decreasing because the ecosystem has changed. Sometimes a lot of water comes and causes erosion and destroys the fish food,"

- Grandpa Bu, fisherman (September 17, 2009)

“8 years ago, the Naga (mythical serpent) swam in the Mekong River. The water flowed very strong. I don't know where the water came from. After that year, many rocks that I had never seen before emerged in the Mekong River. When I was young the water level moved up and down according to the seasons, but the river bank never eroded. Now, the Mekong River in the dry season has less water than usual. I can't conclude why it happened,”

- Pa Taew (October 1, 2009)

Decline in Wild Fish Populations

Kok Wao village is not an exception when considering the impacts of the large-scale dams that have already been built on the Mekong upstream. This is proven by the unseasonal and unprecedented floods and the unseasonal fluctuations that have occurred. These have caused fish species and fish populations to decline. Based on focus group discussions (September 24, 2009), the average value of the wild-capture fishery in Kok Wao village has declined 10% over the past 3 years.

The population of wild fish species that have been significantly decreased from the local fishery are: Pla Ood, Pla Sawai, Pla Nang Daeng, Pla Nah Nu (Pla Yon Pon), Pla Soi, Pla Soi Khao, Pla Jok, Pla Nai, Pla Nin, Pla Eirb, and Shrimp. In contrast, local fishers notice that the population of hybrid fish species has increased in the Mekong. These species include Pla Pak Khem, Pla Ta Pian, Pla Nuanjan. A poisonous fish population known as Pla Pak Pao has also increased.

In the estimated 1.5 Kilometer stretch of the Mekong River in Kok Wao village, there are 11 sub-ecosystems serving as fish and riverine habitats. The wild fish capture may be eliminated in the future if the natural fluctuation of the Mekong River is obstructed by the dam.

Unprecedented fluctuations: River bank and sandbar island erosion wash away local food

Many kinds of food are accessible along the riverbanks and sandbar islands of the Mekong. There are at least 28 kinds of wild and cultivated vegetables and at least 7 kinds of edible riverine animals and insects that exist on the riverbanks and sandbar islands. These areas are important sources of food for the villagers' livelihoods and economic income.

If the dam is built, it will submerge these natural food sources based and destroy the incomes of villagers practicing river bank gardening.

Nowadays, unseasonal and unprecedented fluctuations are causing river bank erosion. This erosion has affected the accessibility of natural food and river bank land for cultivation by villagers. Over the past decade, the river bank area has eroded drastically. 3 years ago, riverbank gardens covered an estimated 250 Rai (40 Hectares). 50 families out of 95 households owned an average of 5 Rai (0.8 Hectares) per family. At present, due to erosion, only 28 households still have small pieces of riverbank land left for mini-gardening. The rest of the households stopped doing

riverbank gardening since the land has eroded and became rocky areas that are no longer suitable for agriculture.

There are 5 main sandbar islands that usually emerge in the dry season and the villagers are able to grow plants and earn income during this time. However, unprecedented fluctuation has shortened the time in which the sandbars emerge and damaged the villagers' crops in which they invested. As a result of the frequency of unpredictable fluctuation during the past 3 years, many villagers stopped cultivating since they are unsure whether there will be enough sandbar areas to plant crops or whether it will be worthwhile to invest.

Pa Taew is a Kok Wao villager who has been affected by the changes in the Mekong ecosystem. She practiced sandbar gardening for 23 years. There were 4 Rai of sandbar gardens in Don Bung Pak Bung on which she used to do rotational gardening of tomatoes, corn and black beans. She could gain 10,000-40,000 from the sandbar gardening during the January-April season. However, 3 years ago she stopped gardening because the sandbar area where she usually gardens was washed away by the water.

"Sandbar Island where I garden has eroded every year. 7 years ago, I had to rent a sandbar garden in Had Kam Pi village for 7,000 Baht to plant crops. I rented other people's gardens because the soil on my sandbar garden was not fertile enough, as it had been eroded. But the sandbar garden that I rented was flooded before I could plant any crops. I don't know where the flood came from. It was abnormal. People said it was made by the Naga."

- Pa Taew (October 1, 2009).

Mono-Plantations and Deforestation

Mono-plantations in the mountainous areas are a potential indirect impact of the Pak Chom Dam in terms of reducing local food security. The Kok Wao villagers' food dependency on the mountain areas is lower than in the Mekong ecosystem due to the steepness and distance from the village that require double the energy and more time for the villagers to get food there. However, it is an available food source that the villagers can access. If the dam is built, not only will people's food source be damaged, but also their incomes. They will also lose land because of the flooding. The villagers' houses along the Mekong will be affected. Many families would have to be relocated elsewhere.

The mountainous area as inherited land used for cultivation could be a re-settlement location. Even through the villagers already have highland fields and conserve some forest areas, more cash income will be needed when natural food sources are reduced. Under these circumstances, deforestation may occur as local people are forced to open more highlands for more intensive mono-plantations.

The Mekong as a Food Source

Most villagers are at least self-sufficient in basic food based on the Mekong and mountainous ecosystems. These areas are sources of food and income for many lives.

Kok Wao villagers depend on Mekong food for their livings and incomes. In addition, the idea of the Mekong as a public resource is a fundamental principle behind how the people in the village use the river. Although nowadays boundary concepts have divided the Mekong according to nation state territories, the villagers believe that the river is a public area where everyone can fish together and should protect the river together.

"I've been living with the Mekong River since I was born and grew up. I love the Mekong. When I was a child, I wasn't afraid of the river. I went to swim and catch fish and shrimp and brought buckets full home. In the dry season, I plant vegetables along the river bank. If the Mekong River dries up, it will be hard to find food. Life will be difficult."

- Grandma Tad, riverbank gardener (September 16, 2009)

"I think the Mekong River is what nature has created for us for a long time. There are foods that we can find in the river. Planting vegetables on the riverbanks and sandbar islands is a way to gain income after we reserve some to eat,"

- Chalad Sornton, grocery store owner (September 18, 2009)

"The Mekong River is a public river where everyone can come to fish. Usually, local fishers reserve one place at a time to fish depending on the first person who reserves their fishing place. The reserved place for fishing is temporary. No one possesses the place for the long term. After catching fish at the place, other people can use that place. It does not affect the other fishers and the environment because we use folk fishing gear which is a natural way of fishing."

- Kwanchai Janhom, villager (October 24, 2009).

Although the dam project plans mentions a mitigation plan to address impacts on food security, there is no guaranteeing the food security of the local people. There is no guarantee of livelihood well-being.

Conclusion

The plan to build Pak Chom Dam will cause huge potential negative impacts on the food security of Kok Wao villagers and lead to social problems in the future. Many villagers feel worried

about the dam. There is unclear information about the dam project planning process, no transparency and little public participation in public hearings and feasibility studies, and a monopoly over information by the government and companies.

At present, the villager's food security is already threatened by erosion due to the dams upstream in China. The Kok Wao villagers rely on natural resources from the Mekong ecosystem and surrounding environment for many purposes. The natural resources provide the food, income, health and spiritual beliefs that maintain community's livelihoods. Therefore, any more dams on the Mekong mainstream will worsen conditions and cause the collapse of everything that depends on natural resources.

Recommendations

Recommendations for the Thai and Lao Governments and Companies

- » The governments and companies must disclose information on the project through the media, meetings and public forums
- » The governments and companies must provide space for full access to information and public participation in decisions at all levels
- » Concerning development projects, the governments and companies must conduct (new) feasibility, EIA, SIA and HIA studies with full public participation, adhering to principles of good-governance, transparency and democracy
- » The government and companies must respect community's rights to manage resources for sustainable livelihoods

Recommendations for the Mekong River Commission (MRC) and ASEAN

- » The MRC must take an active role to push the governments in the Mekong region toward sustainable development through knowledge-based public decision-making
- » ASEAN must take action to stop destructive projects in the Mekong and ASEAN region based on people-oriented participation in decision making, and must support renewable and sustainable energy

Recommendations for Civil Society Organizations

- » Work closely and continuously with local people to enhance their ability to access information and participate in decisions concerning development projects
- » Promote and support trainings for local people to preserve sustainable livelihoods

- » Work in a strong network to provide information on the dam situation to local people and develop campaign strategies with local people's participation

Recommendations for Community Members

- » Monitor the dam project
- » Share information and learn about sustainable livelihoods and development project issues with neighboring communities
- » Set up information centers to share and discuss issues related to the dam project in order to increase solidarity among communities
- » Monitor local authorities and take an active role in decision-making around the project

The Impacts of Chinese Rubber Concessions on Local Livelihoods in Northern Lao PDR

A Case Study of China-Lao Ruifeng Rubber Company in Long District, Luang Namtha Province

by Athu

Mr. Athu is a native of Long District. He is currently studying for his Bachelors degree at Yunnan University in Kunming, China. He has worked on food security issues with Action Contre La Faim (Action Against Hunger) in Luang Nam Tha Province, Northern Laos.

Executive Summary

In October 2006, Kunming Ruipu Biotechnology Co. Ltd. of China's Yunnan province set up a subsidiary in Lao PDR under the name of China-Lao Ruifeng Rubber Company with a capital register of \$US 900,000. China-Lao Ruifeng Rubber Company's first agreement with the Lao government was to conduct a feasibility study for a rubber plantation project in Laos in 2006. So far the company has co-operated with the Luang Namtha provincial military to get their way in project operation. They began forest clearance and planted rubber on 3500 hectares in Long District, Luang Namtha Province between October 2006 and June 2009 before the official contract was signed. The official rubber concession contract was signed by the Lao Ministry of Planning and Investment on 24 June 2009.

The company used the power of the provincial military to get its way for its project operations in Houykoum, Chayee, Khalung and Pouysaikao villages in Long District. The company paid very little compensation for affected people's land and crops, and the villagers who received compensation were not satisfied.

This rubber project has extracted most of the area's natural resources and changed the livelihoods of affected people, who once relied on natural resources and now must rely on selling their

labor to the company to maintain their livelihoods. The main problems that affected people are currently facing are food insecurity, including rice and food shortages, land use limitations, and inadequate compensation from the company.



Introduction

Long District is located in the northwest area of Luang Namtha Province, bordering Burma to the West, China to the North and Veing Phukha District and Bokeo Province to the South. The road to the Luang Namtha Province capital has only been accessible since 1996. Long District is inhabited by people of various ethnicities, including Tai Lue, Lantaen, Hmong, Kui, Doi, Akha, Lahu, Mien, Tai Khao, Tai Daeng and Tai Dam; the Akha people account for 58 percent and Kui people 7.6 percent of the population. More than 80 percent of Long District consists of mountainous areas, which makes infrastructure development difficult.

In the past few years, there has been a new presence of foreign Chinese companies in Long District, Luang Namtha Province. Since 2006, these foreign companies, in agreement with local authorities, have aimed to develop cash crops for export. This has led to the introduction of rubber trees, a long-term crop, and to the creation of large surfaces that are not covered with local staple foods. The development of these cash crops has increased drastically in the past several years.

One of the companies engaged in these activities is Chinese Ruifeng Rubber. This company has caused a lot of problems for communities' livelihoods in Long District because they have occupied the communities' land without paying fair compensation. They have also operated hill projects by cooperating with the provincial military without getting an official rubber concession contract from the Lao central government.

Background

China-Lao Ruifeng Rubber Company

An official rubber concession contract was signed by the Lao Ministry of Planning and Investment on 24 June 2009. This contract allowed the China-Lao Ruifeng Rubber Company to establish its development project in the Xiengkok and Sopla areas in Long and Sing Districts, Luang Namtha Province for 10,000 hectares with a project budget of US \$50 million for a duration of 30 years.

The China-Lao Ruifeng Rubber Company is located in Long District, Luang Namtha Province (northern Laos). Currently, there are four villages of the Kui, Akha and Lahu ethnic groups in Long District that are affected by this project but there is no information about the total number of villages that will be affected in Long and Sing Districts.

This research was conducted only in Chayee and Houykoum villages (Xiengkok area), Long District.

General Information about Target Villages

Chayee and Houykoum villages are located on the Mekong River in Xiengkok Sub-district. The majority of the population belongs to the Kui ethnic group, with fewer Lahu people, and very few Tai Lue and Khmu people. Both villages were relocated to their current location in 1997 following a government resettlement plan that joined small communities to form larger communities. 515 people now live in two villages; all of them practice shifting cultivation, raise animals, and sell their labor.

The Kui and Lahu people are minority groups and few of them are able to communicate or speak the central Lao language. Those who do speak Lao are mostly men.

Research findings

The Strategies of China-Lao Ruifeng Rubber Company

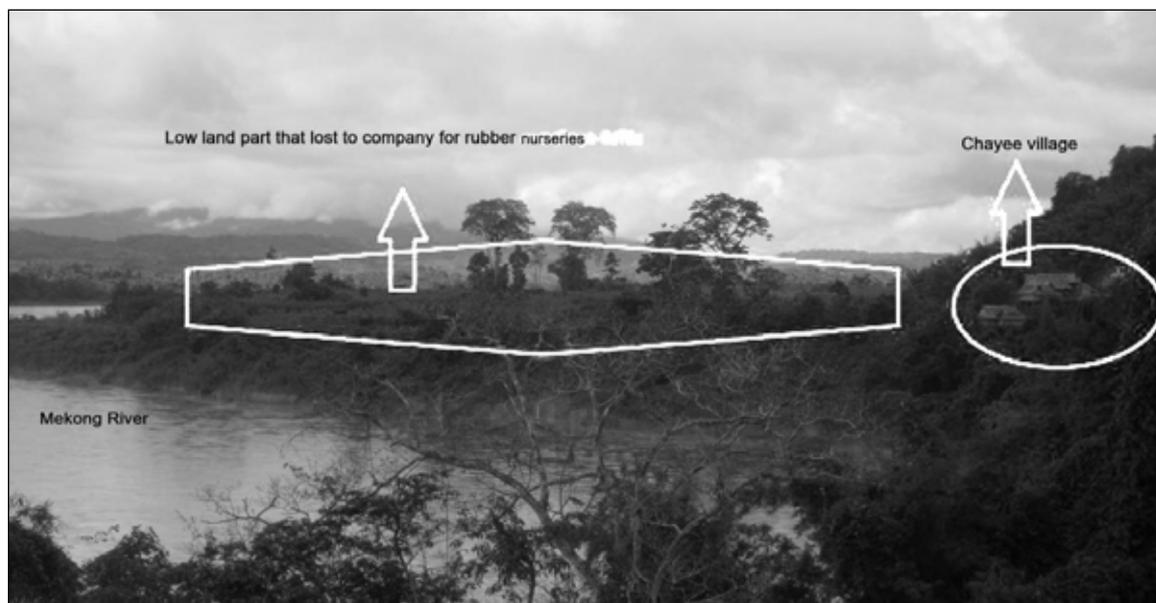
The land concession system in Laos is not transparent. All levels of government have the right to grant land concessions. Even though the law identifies specific amounts of land surface that each level of government may grant, in reality, there are many illegal land concessions that are granted by different levels of government.

In 2006, the China-Lao Ruifeng Rubber Company, the Provincial military, and Provincial and District officials visited Chayee village. The provincial military asked villagers to lend 24 hectares of their lowland farming area along the Mekong to China-Lao Ruifeng Rubber for the company to use for rubber tree nurseries.

At first, the villagers did not agree to grant their lowland farming area to the company because they had already planted a variety of crops such as corn, cassava, rice, and vegetables there for family consumption and income. Additionally, a European Union (EU) project was involved in

development of that lowland area and provided villagers with resources to plant corn as an additional source of food and income. Finally, the military told the villagers that they must give the land to the company because the company would bring development to them and the country, so the villagers felt very nervous and they could not resist the military and the company.

The military has created a lending contract that has been signed by China-Lao Ruifeng Rubber Company and the village headman. The contract said that the company will borrow the lowland areas for three years and pay three million kip each year; after three years the company would return the land to the villagers. But they did not share a copy of the contract with the villagers. Even though the military and company promised the villagers that they would bring a copy to the villagers, it has still not been made available to them. Also, the company has not paid the villagers for the land that they borrowed.



Lowland area lent to the company for rubber nurseries

The China-Lao Ruifeng Rubber Company's Interference with the European Union (EU) project

The EU used to run a food security project in Long District. Chayee village was involved in cash crop activities that aimed to enhance the local households' food and income.

Before the company occupied the lowland (see picture 1 above), the EU project developed this area from forest to a lowland field in the year 2004, providing corn growing activities for villagers. Villagers benefited from the lowland crops for two years (2004-2005) and the villagers even planned to increase corn-growing area in 2006 because they had received specific training on corn farming from the EU project in the beginning of 2006 in Xayabuli Province. Unfortunately, the company occupied that lowland area before the villagers' plans could be carried out.

“Our crops in the lowland area that were provided by the EU project have been destroyed by the company.”

- A village authority in Chayee

The company paid very little crop compensation for people, and then only to those who tried to protest.

The Company Seized Communities’ Highlands

Once the company occupied the lowlands, they started to occupy the communities’ highlands as well. They cut down the forest and they took over the communities’ land. The communities tried to protest to the provincial military, but the response from the military intimidated them because they were told that all land belongs to the military and government and that they have no right to resist any policies, plans, or work of the government.

“They said they would only use lowland areas to establish plant nurseries but they took most of our land including the highland areas.”

- Chayee villager

Land conflicts became a big problem for communities because the villagers were losing their land to the company every day. The company took over land without informing villagers or showing any papers or authorization from the government. The villagers have tried to plea with the local officials many times to argue that the company is violating the rights of their communities, but the local district officials were not able to solve the problem. Then the villagers wrote a plea to the provincial officials. After several months, a team that included many official authorities including the Provincial Military, the Provincial Land Office, the Province Agriculture Forest Office, the District Land Office, a Muang Long agriculture technician, a provincial land technician and China-Lao Ruifeng Rubber Company representatives came to Houykoum village. They gathered representatives from the four affected villages to join in Houykoum village and asserted that the China-Lao Ruifeng Rubber Company and the Provincial Military were cooperating with each other to establish a rubber plantation project. The villagers thought the team came in response to their plea, but in fact they found out they have no right to resist because all the land belongs to the government and military.

“We are civilians, how can we resist the military?”

- Chayee villager

The China-Lao Ruifeng Rubber Company violated the decree of the Lao Prime Minister in 2005 concerning compensation for people affected by development projects. The decree says

that if part or all of the land, particularly agricultural land, settlement land, and trading land, is affected by a project, the project owner has to compensate with new land that is of the same size and producing ability, and the new land should be agreed upon by affected people and the project owner (Chapter III, Article 6 (2))¹.

Responses of Affected People

There are four affected villages: Khalung, Chayee, Houykhoun and Pousaykao in Long District, and all the interviewed people in these areas had lost land to the company. The livelihood practices of Akha, Kui and Lahu ethnic societies before the arrival of the Chinese Ruifeng Rubber Company consisted of shifting cultivation, collecting forest products, and raising animals.

Since the company has occupied their land, problems for the livelihoods of the communities have arisen. People's animals have been reduced to just a few chickens and pigs, and food and rice shortages are growing worse and worse. Villagers have no option to maintain their livelihoods other than by selling their labor to the company. Every day, they work for the company for 30,000 to 40,000 kip (US \$3.70-\$5.00) per day; they are also involved with the company as contractors who take care of the rubber for 1,500,000 kip (US \$188) per hectare per year. The villagers admit this is not terrible pay for them but they need to work hard every day before they receive wages.

The livelihood costs for the villagers are high because now they need to buy almost everything and so they are indirectly forced to work for cash for the company on the land they used to own. But households who lack man-power have serious food security problems because they cannot work for the company for income, and natural resources are now very limited.

Working for the Company

Advantages of Working for the Company

There are some possible ways that communities could benefit from the company, such as jobs and wages, improved infrastructure, and the little compensation that was given to local communities. However, although villagers can sell their labor more easily because of the project, there are many negative effects of working for the company.

Problems with Working for the Company

Opportunities for villagers to sell their labor are increasingly available, but communities are concerned about potential health problems. Also, households that lack man-power cannot access these opportunities. There are also difficulties in getting daily wages from the company. There are often delays in payment and laborers are not paid enough. Because working with rubber plantations is still a new experience and the villagers' knowledge of rubber farming is still limited, the company always criticizes the laborers' quality of work.

1) Decree of the Lao Prime Minister in 2005 concerning compensation for affected people from development projects Chapter III: Compensation Article 6: Principle of Compensation Number 2.

Daily food consumption and health problems are big concerns for the workers because the rubber plantation site is deep in the mountains and far away from food and the health center, and those services are not included in the contract. The employees find food in the forest that is nearby every day. The company also set up a market at the rubber plantation site, and they import food at a high price to the working sites, so workers can buy the food or take an advance if they have no money to buy food. The company subtracts this debt from a worker's full wages. This practice causes high debt, and workers are not able to finish their contracts because the debt keeps increasing so the contract must keep being extended.

Impacts on food security

Community Land

The shifting rice cultivation systems in Ban Chayee and Houykoum are undergoing dramatic changes. Most communities do not have enough land for farming because the company continues to occupy their land and plant rubber on it. Nowadays, land is very limited and is a very serious issue for villagers. Shifting cultivation in particular is a serious concern. A small amount of land is still available, but it is located very far from the village. About 27% of villagers said that they have enough land, but that the land is located too far from the village and is difficult to access. The rest said that they do not have enough land. The villagers still don't know if they will lose more land to the company because they do not know exactly where the company land is, and information about the land areas that have been allocated to the company has not been made public.

Since the company occupies most of their land, communities have had to find new land for shifting rice cultivation. This new land is very far from their homes and availability is very limited. How can they cultivate rice rotationally under these circumstances when their type of rice rotation requires fields to be left fallow for a minimum of five to six years? If the fallow period is only 2-3 years, there will be a bad harvest yield, causing a rice shortage. To make matters worse, the military told the communities that they have no right to receive compensation for loss of highland farming area because the fields are fallow and compensation is paid for crops only.

Villagers' Solutions to Land Shortage Problems

Villagers who are employed by the company under one year contracts to take care of rubber plantations also plant rice in the rubber plantations, which allows villagers to get both rice and money for taking care of rubber plants. Even though planting rice in the rubber fields causes a poor rice yield, villagers have no other options.

2009 Rice Shortage

Rice shortages have been dramatically increasing since the Provincial Military granted the communities' land to the company to plant rubber. Land has become limited, which causes the villagers to have to use short fallow periods for their upland rice. This leads to poor land quality for upland rice production. 100% of interviewees faced rice shortage in 2009. Insufficient land

is also a concern because the villagers must grow rice on the same plot of land for several years, causing poor land quality, which in turn causes rice diseases.

Solutions to the Rice Shortage Problem

The most common solution to the rice shortage problem is for villagers to sell their labor. Villagers are forced to work more for low wages to meet their needs for daily food consumption and income.

Selling handicrafts is another way for communities to earn income in order to help mitigate the rice shortage. They usually bring their handicrafts to sell or exchange for rice with Burmese people on the other side of the Mekong River.

Conflict Between Rubber Production and Raising Animals

Raising animals is a major component of the villagers' income and food. Before the company occupied the land, villagers raised animals relying on natural systems, and there were no problems finding breeding places. There were no large commercial plantation fields. The environment was healthy and animals were free to graze for food. It is important to note that almost all households had several cattle and buffaloes that they used to generate household income and food.

In 2007, the company told the villagers that all cattle, buffaloes and pigs must be bred and taken care of near the home in order to protect the rubber nurseries. If an animal damages the rubber nurseries, the owner of the animal must pay for the damage. In 2008, nine pigs from Houykoum were shot by the military and Chinese workers because the company said those pigs had damaged rubber nurseries. The villagers did not believe that all the pigs had damaged rubber nurseries because some pigs may have gone searching for food around the camp. They suspected that the military may have killed the animals for their food and then claimed that the pigs damaged the rubber nurseries. Villagers in Houykoum noticed that the military had lent guns to Chinese workers to shoot the villagers' pigs.

Since the company began operating, the rubber development project has directly impacted the villagers' animals: in Chayee village only three cows remain, and Ban Houykoum ten buffaloes and a few pigs and chickens remain. The villagers are not used to keeping their buffaloes, cows, and pigs in pens, and they complain about the difficulties of raising their animals in an environment where they must pay the company for any damage to company crops. This sometimes leads to conflict between the villagers and the plantation company. Most of the time the villagers fear that they will have to pay for damage, and so they prefer to sell their animals to avoid complications.

Problems with Accessing Natural Resources

Since the company occupied and cleared most of the forest land, the biodiversity of natural resources has been damaged. Meanwhile, the company is continuing to plant thousands of rubber trees every day. This causes negative impacts to the livelihoods of villagers who depend on forest products. Villagers now have to rely on food from the local market on the Burma side and every day the Burmese people carry food to sell in the villages.

Important forest products such as bamboo, rattan, edible insects, fish, wild animals, and a wide variety of herbs and wild vegetables have dramatically decreased because the company cleared entire forest areas. One such wild vegetable, mak neng, was a major source of income that was collected from the forest and sold for a good price. Yod kheem is the only kind of wild plant that has increased since the company began operation in this area, as it thrives in cleared forest areas.

Problems Accessing Water

Ban Chayee and Houykoum gained access to a water supply system in 2003 with the help of EU and ACF projects. There are several tap stands in the villages. Since the company occupied the area, there is not enough water during the dry season because the company cut down most of the forest, including the watershed forest for Houykoum village. Villagers must rely on the river water for use during droughts, but this can cause health problems, such as diarrhea, for communities.

"Their trucks come and take our water, leaving less water for us."

-Houykoum villager

The company's camps are located near the village, and many Chinese people and members of the military live there. The company sometimes brings a big truck full of plastic tanks and takes as much of the villagers' water as they want; they don't even ask for permission from the village authorities. Villagers tried to resist the company but it was very difficult because the company repeatedly ignored the villagers' resistance and took the water anyways.

In this action the company did not respect community rights and also violated the community's ownership of its resources. The government should monitor the company's actions and declare that national and international human rights standards need to be respected.

Health Problems

Before the company occupied the area, some diseases were found in the communities seasonally such as malaria, fever and diarrhea. There were not, however, sexually transmitted diseases in the communities. Now that the company has occupied the area, people from different regions are coming to work for the company. Some of them are based at the site of the rubber plantations and they sometimes meet and drink with young girls from the local community. Sexually transmitted diseases have become a very big risk for these communities.

Conclusions

The Luang Namtha Province military took bribes from China-Lao Ruifeng Rubber Company to develop rubber plantations before an official concession was signed by the central Lao Government on 24 June 2009. The provincial military was paid to be the project coordinator; the military also collaborated by offering bribes to relevant officials from provincial and district levels for facilitating project operations.



The military abused its position and power and took the communities' land for the company's benefit in four villages in Long District: Houykoum, Chayee, Khalung and Pouysaykao. In doing this, the military violated the Lao Anti-Corruption Law that defines taking bribes as using one's position to benefit by giving a bribe and abuse of power as using one's power to benefit at the expense of citizens (Article 13 and 14).

The military told the communities that they have no right to demand compensation; only a few villagers in Chayee village received very small compensation for their crops. Since the company got a land concession from the military, they have used their power to take advantage of local citizens. This system is corrupt.

The villagers have been indirectly forced to work for the company on the land they used to own in order to maintain their livelihoods. There is no other option for maintaining livelihoods other than selling labor to the company. Food and water shortages are growing worse and worse because there is not enough land for shifting cultivation and because the company cut down most of the forest.

The villagers are not used to keeping their animals in pens and they complain about the difficulties of raising animals in a limited environment, especially when they have to pay for any damage their animals might cause to the rubber plantations. This leads to conflicts between villagers and the company.

The problems around rubber plantations happen because the government has given investors land concessions without carefully studying the negative impacts before allowing the investors to run the project.

Recommendations

To the Luang Namtha provincial military and provincial and district officials:

- » Stop accepting bribes from the Chinese Rubber Company or other development projects because this is a violation of articles 13² and 14³ of the Lao Anti-Corruption Law.
- » Stop lending guns to Chinese workers to shoot livestock because they have no right to use the weapons.

To the China-Lao Ruifeng Rubber Company:

- » Pay fair compensation to affected people. The decree of the Prime Minister of Laos in 2005

2) Taking Bribes: Taking bribes is receiving, claiming, requesting, or agreeing to accept material items or benefit from someone else by using one's position, power and duties to provide direct or indirect benefit to the person giving the bribe.

3) Abuse of Position, Power and Duty: Abuse of position, power and duty to take State property, collective property or individual property is the use of one's position, power, and duty in order to benefit oneself, or one's family, relatives, or clan²² that causes damage to the interests of the State and collectives or the rights and interests of citizens.

has declared that compensation law must be enforced.

- » Return the lowland farming areas and pay money to Chayee villagers after three years because that is what was agreed to in the 2006 contract between the village headman and the company.
- » Sexually transmitted diseases should be an issue of discussion between companies and Lao government representatives and solutions should be provided for workers as well affected communities.

To the central Lao government:

- » Do not allow projects to begin unofficially without contracts because it creates loopholes and also violates the legal process of land concessions.
- » Provide trainings for communities on land law and the right to compensation.
- » Set up a team to monitor company activities to be sure they do not violate human rights and environmental laws.

To affected communities:

- » Create a network with other affected communities to learn how to demand fair compensation and accountability from the company.
- » Protest against the company so they will return the lowland areas according to the three-year contract.

To Non-Governmental Organizations (NGOs)

- » NGOs that help villagers with human rights and environmental advocacy need to be established to help empower villagers to understand what human and environmental rights are in order to protect them from bad development projects and ensure their rights to participation in decision making.

To researchers:

- » Strong knowledge of laws related to land, compensation and the environment is needed before continuing to carry out this research. There have not been any legal documents shared with affected communities. All legal documents have been kept by the company and government agencies. It is hard to sue the company in court to get justice, so the best solution is to try to get as much project information as possible in order to be witnesses.

References

- <http://syx1981116.rubber.com.cn>
- Vientiane Times on June, 24 2009. Rubber Concession Contract has been signed by Ministry Planning and Investment of Lao PDR and Kunming Ruipu Biotechnology Co Ltd. of China's Yunnan Province in Vientiane.
- THE ANTI-CORRUPTION LAW. No. 03 /NA Vientiane Capital, 19 May 2005.
- Decree of the Lao Prime Minister in 2005 concerning compensation for affected people from development projects Chapter III: Compensation Article 6: Principle of compensation Number 2: In case some part of the land or the whole is affected from the project, especially agricultural land, settlement land and trading land. The project owner has to compensate with new land as the size, producing ability and the new land should be acceptable between affected people and the project owner.

The Effects of Elite Recreation Projects on Local Food and Social Security in Vientiane, Lao PDR

by Thepvayha Suksayna

Thepvayha Suksayna is an independent researcher and environmentalist based in Lao PDR.

Overview

The purpose of this research is to study the effects of land concessions on local food security using an elite recreation project as a case study. The area of the study is Dongkhamxang Conservation Area Hadxaifong and Saysettha districts, Vientiane. On 26 December 2008, the Lao Ministry of Planning and Investment and Vietnam's Long Thanh Club Residential Estate agreed on construction of a golf course, a high-class village and a five-star hotel. It started in the year 2009 and is expected to be completed by 2020. The project cost is estimated to be one billion dollars, with the structures occupying an area of 557.74 hectares. It covers four villages' areas and includes Dongkhamxang, Nahai and Nongheo, Hadxaifong districts and, in Xiengda village, Saysettha. The area was determined to be state land on 20 April, 1999 by the Vientiane municipality governor; however, the land had been occupied by local people for many generations before the area was declared a conservation area.

The project will cover three main types of land: farmland, forest, and settlement areas. The land concession period is fifty years. The land title for this project was issued by the land administration of Vientiane. The company would assist the authorities with 12 billion kip (approximately US\$1.4 million) towards paying compensation to affected communities.

This research found that if the project is implemented it has the potential to affect the local people's food security as well as increase poverty. Many people interviewed think that their lives will be worse because they will lose much more than they will gain. There are two main food sources in the farmland and forest project sites. Local people rely on these sources to insure their

food and income security. About 39.078 hectares of paddy field land that belongs to 50 families in Dongkhamasang, Nahai, Nongheo, Hadxaifong district, and Xiengda, Saysettha district will be lost, and about 169.26 hectares of gardens belonging to 253 families will also be lost. Because of limitations to data access, these numbers may in fact be greater.

This research found that the process of the project development was not transparent and proper procedures were not followed. There were not effective consultation opportunities for affected people, and they were poorly represented for compensation payment purposes. Importantly, the research found the compensation inadequate for people who rely on the land in particular. There is also confusion regarding resettlement for the affected people.

Complaints about this project reflect myriad controversies, including a lack of transparency, the government's autocratic stance, and the people's fear of eviction; this all affects the government's credibility. Many people, particularly Nongheo and Xeingda villagers, sadly gave up their land for the project due to ignorance about their rights. However, many are still fighting for their right to receive fair treatment by trying to hand in petitions to relevant organizations.

Background

Lao PDR is classified as a "Least Developed Country" by the United Nations. In 2004, 71 percent of its population lived on less than US\$2 a day and 23 percent on less than US\$1 a day.¹ The Lao government is trying to remove the country from the list of least developed countries by 2020. The country depends on assistance from multilateral agencies and foreign investment in its natural resources.² However, agriculture remains the major sector of the economy.

Land concessions in Laos have affected people's lives and foreign investments in agriculture. There are many land-use conflicts caused by development projects, for example, plantations, mining, hydropower and other projects have taken agricultural land, forests, and settlements from people. Many reports posit that land concessions have had negative impacts on food security and poverty reduction efforts. It may also cause social unrest if justice is not attained.

Research Objectives

The objectives of this research are as follows:

- » To evaluate the effects of land concessions on local food security and poverty
- » To evaluate the processes and compensation policies of the project.
- » To understand how people have responded to this project

1) Fish, Frogs and forest vegetables: Role of wild products in human nutrition and food security in Lao PDR. Joost Foppes, 02 June 2008.

2) <http://uk.oneworld.net/guides/Laos/development>.

Results of the research

Impacts of the Land Concession on Local Food Security and Poverty: 253 Families Displaced

Impacts on local food security has only begun in 2009, and is expected to grow as the project advances. Based on the land type, there are two main food sources in the farmland and forest project site.

Farmland

On farmlands, people generally have paddy fields and gardens. Paddy fields are a rich source of food. Along with rice itself, people find a number of eels and aquatic species, insects and edible plants. Rice is mostly for subsistence consumption and sufficient for the households' needs all year. Any extra is sold. Sometimes, if a family needs money for emergencies, farmers sell their rice. There are some other foods in paddy fields; for example, wild edible plants and young grasses, frogs, and edible insects. About 39.078 hectares of paddy field that belong to 50 families in Dongkhamsang, Nahai, Nongheo, Hadxaifong district, and Xiengda, Saysettha district have been subsumed by the project. In fact, there are more areas of paddy fields which have been subsumed by the project, but they were difficult to access due to both security issues and time limitations.

People use their garden products for both personal consumption and sale. Some herbs such as lemongrass, ginger, galangal and others are not usually sold, while the other vegetables are regularly sold to traders from the market. However, some people sell it by themselves at the local markets near by. The products are sold into markets such as Huakau, That Laung, Suanmone, Thong Kunkam and many other big markets in the town. Based on the number of garden areas accessed, about 169.26 hectares spreading across the four affected villages and belonging to 253 families are within the project site. More gardens are affected by the project, but it is difficult to access this data.

Furthermore, people raise a variety of livestock: cattle, buffalo, goats, chickens and ducks. (Chickens and ducks are usually raised at people's homes). There are at least five varieties of fish in the ponds. Livestock is raised in the paddy fields and garden areas. Grass plateau areas provide grazing and fodder for cows and buffaloes, especially in the rainy season. Many livestock products are for both consumption and sale. Cows and buffalo are generally sold.³

Forest

The forest consists of a small wetland where people can find frogs, fish, plants, and many other foods. Many people, including students from Dongkanxang finance, education and agriculture colleges, as well as from broader communities nearby, come to catch fish in the wetland. Therefore, the wetland area can also be regarded as offering its resources to many people. Depending on the quantity of fish they catch, local people may sell some fish in the market.

3) For details about food items in the project area, see appendix1

Besides the small wetland, there are a variety of NTFP (non-timber forest products) in the forests: for example, bamboo shoots, ant eggs, mushrooms, wild vegetables, and others. The forest is also a food source for animals. Before the project took over the land, people led their animals to graze in the forest so that they would not damage the paddy fields and gardens. Additionally, the villagers depend mainly on firewood from the forest for cooking.

Perspectives on the loss of food sources: Current effects on local food security

Loss of Subsistence Resources (Inability to Access Non-Timber Forest Products)

Since the construction project has begun, the forest is protected by Vietnamese soldiers and Lao workers. They forbid the local people from collecting food, grazing cattle or gathering fuel. Gollowing is what people who relied on the forest said:

A man in Donkhamsang village said,

"We are poor people, so we use fuel in the forest to steam rice. If we cannot access the fuel how can we cook? Shall we use gas stoves? How can we afford them? What the project does is like killing us indirectly."

An old woman in Nongheo carried a basket, walking around. She lamented that she wanted to go to the forest to collect mushrooms, but she dared not go there because she was scared of the Vietnamese soldiers. She said that the project workers forbade the villagers from entering the forest. She learned this from her neighbors when they went to the forest to hunt birds and collect firewood. They were driven out of the forest.

Another man in Nongheo village lamented:

"Nowadays, we can't do anything in the forest. I try to lead the cattle to graze in the forest, but they don't allow it. Also, people cannot find bamboo shoots and mushrooms there because they don't allow us to go in."

People are forbidden to access the community resources that they have relied on for many years. When the forest is taken away by this development project, these important resources will be gone completely.

Loss of Farmland

This year is the last year for the farmers to grow their products should the government confirm that they will go ahead with the project. These farmers are not sure of their future after giving up the land. Through investigation it was found that the affected people rely on their land for food and incomes. For example, an old woman who is a Xiengda farmer said,

"We hardly buy food because we have everything we need. We have ginger, galangal, chili, lemon-grass and other herbs. We don't have to buy rice. We just use money when we get sick or to buy other necessary things. Every year I earn money by selling my garden products and I think it is sufficient for my family. Next year I won't be able to do it because of this project. I don't know what to do."

Loss of Livelihood Alternatives Deepens Poverty

The farmers do not believe that their lives will be better after this development project. It raises the question: what can they do to earn a living if they can't access the land?

"After harvesting rice we will take our things and go away from this land." He was asked what job he would do after giving up the land. He said, "I don't know yet, I'll just follow my luck. What can I do? I cannot take it back. I don't know where I can ask for help."

- Male Nongheo farmer

It is not only him—many others said the same thing.

"I have earned my living by growing rice for many years. This year I heard about the project, so I decided not to do so because I worry I will get nothing [...] I will be poorer because I can't grow rice to eat and sell. I don't know what to do next. I may rent other's people land to do farming, but I'm not sure if other people's land will be available for me or not."

- Female Xiengda farmer

Project process and compensation

Project Process

The project process data will be divided into two sections as follows: access to information and the survey process. (Note: these facts are mainly from Dongkhamxang and Nahai villagers, Hadxaifong district).

Access to Information

On 6th August 2008, the authorities told people to notify the government about the land they occupied. They told people it was for reviewing the conservation area, but the data was used for the compensation process. The government did not even mention the projects.

On 9th November 2008, the Vientiane capital governor announced the golf course project. It is

said that 500 hectares of the area would be the project area, while 36 hectares in Dongkhamxang village and 21 hectares in Xiengda village would be a resettlement area.

The Vientiane Mai Newspaper published conflicting information on 29 December 2008, saying that the golf course site would be 536 hectares. People started becoming confused.

On 6th May 2009, other declarations of the project site by the Vientiane capital governor were made. He claimed that 557.74 hectares belonged to the state under state land titles, and the purpose of land use was for golf course development. In fact, those land titles covered people's land.

Since 14 May 2009, the Nahai and Donkhamxang authorities asked affected people to claim their compensation. It is said that if anyone did not accept the awarded compensation, they would lose their rights to it later. The village authorities assisted the company with compensation work.

On the 26th May 2009, the Vientiane capital authority office made a declaration regarding compensation administration for affected people. It said that the relevant organizations should continue awarding compensation until it was finished. The district should work more on changing people's ideas to help them understand the development project. Those who do not accept the compensation and try to go to the forest to cut trees should be punished according to the law. Those that do not really have a place to stay, in particular government officers, soldiers and police, should be provided resettlement, but this category did not include ordinary people.

On the 16th of June 2009, some Nahai villagers were called to the district because they refused to accept the compensation.

Recently, the Dong Khamxang village authority promised affected people who had not accepted the compensation that the authorities would provide a resettlement area of 36 hectares within Dongkhamxang village. Those who already set up their houses did not have to move. The authority mentioned that each person would get 400 square meters of resettlement land. It is not clear if 36 hectares of land will be enough for more than 200 families. It is likely impossible because people already occupy those 36 hectares.

Survey Process

According to the Dongkhamxang and Nahai villagers, they first saw some Vietnamese surveyors and a translator working in the forest on 8 September 2008, but they did not know why those people had come to their village.

On 3 October 2008, they saw a tractor attempting to make in-roads without any prior warning. On that day, the company's tractor damaged people's gardens.

"I have never forgotten that episode. At that time I was cutting grass in my garden. I heard the sound of a tractor coming. I looked at it coming straight on my land. I thought it would hit my fence, but I could not understand why the driver would do so. As I expected, it hit my fence and crushed my mango and banana trees. I called out to my uncle sitting in the hut. He did not know what to do. He was scared and silent. So I decided to shout at them, then they stopped. I asked

them many questions, but they could not answer me. They just made jokes at me and continued their work, avoiding hitting my land. Other people also had their crops and chicken stocks damaged."

- Donkhamxang village woman

On 5th April 2009, the land administration of Vientiane authorised the project developers to put posts on people’s land without informing and asking permission from the people.

"They never told us in detail what they would do on our land; they only said they would build a golf course. Once, I saw the village chief. I'm not sure who came with him, but I can remember my village chief very well. He came to mark the tree for the company on our land without permission. He did not inform us about his intention. Actually, he is supposed to tell us."

- Nahai village woman

Many affected people in other villages also said the same things.

On 7 April 2009, officers from the land administration of Vientiane came to record details about people’s houses. One officer said that people had to stop any home or land improvement activities because the project would be operating soon.

On 30 April 2009, there was an important event when a backhoe dug in people’s land without information or a permission letter. The villagers gathered to question and blame the digger. The villagers demanded that he refill the land. In the afternoon of the same day, officers from the Vientiane capital authority, the vice head of Hadxaifong district, and the head men from Nahai and Dongkhamsang villages with their people came to the community. They hoped to use the land of one villager to organize a ground-breaking ceremony, but the villagers gathered together and asked the officers many questions. The officers were very embarrassed and at a loss to answer the questions, so they stepped back toward their cars, and rushed out of the community immediately.

Compensation

Compensation will be divided for two groups: for agricultural products and settlements.

Land type	Product compensation	Compensation for land that has been cleared
Paddy field	2100kip/m ² (\$0.25/m ²)	500kip/m ² (\$0.06/m ²)
Garden	400kip/m ² (\$0.05/m ²)	450kip/m ² (\$0.05/m ²)

Compensation for agricultural products is calculated for three years in accordance with average annual farming outputs in the area. The government appears not to be planning to provide compensation for land that has been cleared by villagers; compensation will only be provided for

lost opportunity to produce agricultural products. Compensation for settlement will be provided depending on the type of house involved.

No compensation is given for either paddy fields or garden land because the people do not have land titles; however, the people said they had occupied the land for many years and they also paid taxes every year for using the land, so they have the right to use the land. It is still not clear why people don't have land titles even though they have occupied their land for many years. This research did not cover this issue in detail. Resettlement is said to be provided, but it is unclear how.

People's Perspectives on Compensation

Interviews with affected people, both those who already accepted compensation and those who have not accepted compensation, revealed that they are not satisfied with the compensation because it is not equal to their loss. The primary reason people gave for accepting compensation is that they think there is no way to deal with the development project because they think they are defenseless, and so they have to follow the authorities. Even though people think the way that the authorities treat them it is inappropriate, they dare not do anything. For example, an old man who is a Nongheo farmer said,

"I really did not want to accept the compensation. I tried to give my reasons to the authorities, but they said that if I didn't accept it I would not get anything, including my land. I am helpless. They said I was trying to work against the government and the party's work to develop the country and as such I could be accused, so I must accept the compensation."

Additionally, the affected people who accepted compensation had to share their compensation with the village leaders who provide the leverage to get them compensation. This action added a greater loss for the affected people. The man also said,

"Compensation is not fair and equal because those who have less land than me got more compensation than me. I got 40,000,000 kip (\$4,708) for over 3 hectares of farmland. It's not enough at all. Moreover, I had to pay the head man to arrange for me to get my compensation. If I didn't pay him I could not get his signature to get compensation."

The people who accepted the compensation are mostly Nongheo and Xiengda villagers, while several people in Dongkhamsang and Nahai villagers have not accepted it yet. The people in these village said they essentially rely on their land; if they lose it, they do not know where and how they will make a new living.

“My family and I rely on this garden land, if we don't have it we don't know the way to go because the compensation is too low, so I don't really want to give up my land. Once we lose it we will have nothing.”

- Nahai village woman

“If the project takes my land, I don't know where to live. I am a government officer on a low salary. The compensation is also very low, so I will not be able to buy new land for a new settlement. What can I do?”

- Dongkhamxang village man

This reflects a process littered with corruption and high-handedness: the authorities forced the villagers to accept it.

People's Responses

People's responses came in two forms: people's opinions about the effect of the project on their lives and people's actions.

People's Opinions on the Effect of the Project on their Lives

Generally, people do not agree with the project. The project implementers did not come to ask about people's opinions. The authorities just pushed the project on the people without listening to their perspectives. The compensation process is corrupt, yielding low and unequal compensation. Many people were threatened into accepting compensation. Those who have not accepted compensation live in fear because they are worried about being forcibly evicted. This has happened many times. The project has no good operational procedures. It will exacerbate people's poverty. An old woman, when she was asked about her feeling about the project, said,

“I don't understand who will come to play golf in a large area like this. It's not clear to me why they need so much land. They even don't think about poor people. What will we do if we can't farm?”

Moreover, people have lost faith in the government, especially at the village level and the Vientiane capital level.

“My wife and I have worked for the Lao party and government our entire lives. I went to the battlefield, fought with the enemies, and hoped one day we would be free and have good life.”

- Donkhamxang village grandfather

The poor man started crying and hit his chest hard because his sacrifice and nationalism had not been appreciated by the government. He continued,

“The land—just a piece, the government never gives us. This land was bought with our hard-earned money, why do they want it from us to give to the investors? Where will we live?”

These complaints demonstrate that there are many problems besetting the projects, and they have raised the question of how this project, which is supposed to develop Lao PDR, will culminate in socio-economic stability.

People’s Actions

Those who have not accepted the compensation (Dongkhamxang villagers) wrote petitions to relevant organizations such as (1) the Vientiane Land Administration, (2) the monitoring agency of Vientiane capital, (3) parliament region I, (4) the national land administration, (5) the national monitoring agency, (6) the Prime Minister, and (7) the National Assembly.

The petitions got responses from Vientiane and the national monitoring agency. The officers visited the site, and they addressed the issue to the national land administration because it is responsible for dealing with land conflicts. But the national land administration has not yet responded. The people, authorities, and the company have not found any solutions yet.

Conclusion and Recommendations

The project has no clear operational mechanism. It is sure to take a toll on the food and income security of local people who rely on the land at the project site. This project is not appealing to the public as it has no transparency or credibility. A lot of people sadly gave up their land because they lack awareness about their rights and they do not have good consultants. Some people are still fighting for their rights, but the justice process is very slow.

This project is clearly contrary to the Lao government’s policy to expunge the country from the list of least developed countries by 2020. This is because the project does not support affected people and poor people because they cannot access their farmlands and the natural resources they need for their livelihoods. It also raises concerns about the implementation of the Decree on Compensation and Resettlement of Affected People by Development Projects. Articles of particular relevance to this case are highlighted in appendix 1 below.

Moreover, the project has potential implications for the right of entry to land and food for persons and community, raising concerns about the right to an adequate standard of living under the UN Covenant on Economic, Social and Cultural Rights, Article 11⁴. The project also did not provide free, prior, and informed consent. Therefore, it violates the right to information, participation and decision making under Article 19 of the UN Convention on Civil and Political Rights.⁵

4) See appendix 3

5) See appendix 4

These concerns must be addressed before any meaningful progress can be made in addressing poverty in the Lao PDR.

Appendix I: Excerpts from the Decree on Compensation and Resettlement of Affected People by Development Projects

Chapter I: General Provisions

Article 3: Definition

Number 4: Project commencement date means the date when project owners undertake a census to identify affected people within the project boundaries, and when the project owners inform the project's affected people. 30 days prior, to register as affected people. People who are not registered as affected people shall not be entitled to compensation or other rights.

Chapter III: Compensation

Article 6: Compensation Principle

Number 2: Where significantly large or entire land holding is affected by project namely agriculture, residential or commercial land, the compensation shall be through provision of "land for land" arrangements of equivalent size of productive land, acceptable to affected people and project owners.

Number 6, paragraph 2: Affected people in urban areas, who do not have any legal land use certificate or any others acceptable proof indicating land use right to the affected land and assets they occupy and who have no land at other places will be compensated for their lost rights to use land and for their other assets at replacement cost and other additional assistance to ensure they are not worse off due to the project.

Number 7: All affected people, regardless of land use right, will be entitled to compensation for lost assets (structures, crops, trees) at replacement cost, and provided with other forms of assistance during the transition period, and economic rehabilitation assistance to ensure that they are not worse off due to the project.

Number 8: All previous claims and unresolved issues related to tenure status and ownership of land and other assets affected by sub-project or components shall be resolved prior to initiating any new land acquisition measures on the representative sub-project component.

Number 10: Prior to the commencement of project construction, affected people shall be fully compensated and resettled and rehabilitation measures shall be in place, although not necessarily completed yet.

Article 8: Economic Rehabilitation

Number 1: All affected people severely affected by the project due to loss of 20% or more of productive income generating assets (loss of agricultural, industrial or commercial land), means

of livelihood, employment or business and access to community resources shall be entitled to sustainable income restoration measures in addition to their entitlement for compensation and other allowances enabling them to attain a minimum pre-project livelihood.

Article 12: Participation and Consultation

Number 1: The project owner shall implement the resettlement program in a participatory manner ensuring that affected people, local authorities and other stake holders are fully informed and consulted and their concerns are taken into account at all stages of project cycle, particularly during the planning and implementation phases of land acquisition, valuation and resettlement process.

Article 13: Grievance Redress Mechanism

Number 1: The Project owner shall establish an effective mechanism for hearing and for grievance redress during the resettlement planning and implementation in the project.

Appendix 2: Excerpt from the United Nations international Convention on Economic, Social and Cultural Rights

Article 11: Every one has the right to adequate standard of living for himself and his family, including adequate food, clothing and housing. Every one has the right to be free from hunger.

Appendix 3: Excerpt from the UN International Convention on Civil and Political Rights

Article 19: Every one has the right to freedom of opinion and expression.

Impacts on the Water Quality of the Xe Bang Fai River as a Result of the Nam Theun 2 Dam

by Kong Xebangfai

Mr. Kong Xebangfai's hometown along the Xe Bang Fai River has been affected by the Nam Theun 2 Dam, and he is working with his community to prevent additional problems and restore local livelihoods.

Summary

This report presents findings regarding impacts from the Nam Theun 2 Dam on the water quality of the Xe Bang Fai (XBF) River. The water quality of the XBF River from Mahaxay District to the Mekong River is worsening, and this affects local people along the river banks as the hydroelectric dam on the Nakai Plateau releases water into the river.

The Nam Theun Power Company (NTPC) produces electricity to sell to Thailand from the release of water from the Nam Then 2 reservoir into the XBF River at Mahaxay District via a 27 Km channel¹. The reservoir is located on the Nakai Plateau and covers 450km². When the NTPC built the Nam Theun 2 Dam, the biodiversity of the area was lost and the forest destroyed.

Nowadays everything in the river is changing negatively. It is difficult for the local people to live because they cannot find good water for using and drinking every day, especially in the dry season when the water in the river is not clean. After interviewing the village people, it was found that when local people take a bath, touch or catch fish in the river, they get a form of eczema or skin rash due to the poor water quality.

1) <http://www.namtheun2.com/>



Introduction

In this research I focused on the impacts of the Nam Theun 2 Dam on the water quality of the XBF River. The Xe Bang Fai River is the life blood of local people. The river has suffered serious negative impacts on its water quality since the Nam Theun 2 Dam started operations to produce electricity in 2009.

The information from this report is based on interviews I conducted in villages along the Xe Bang Fai River and with members of organizations who work very closely with the NTPC. I compared this with my own experiences of growing up in the area. In my report I will talk about the background of the project, the negative impacts from the dam on the water quality in the Xe Bang Fai River, changing levels and flow of water in the river, the health problems of local people and impacts on fisheries. Finally I will give recommendations to the company, the Asian Development Bank (ADB) and World Bank, the Lao government, NGOs and local communities.

Methodology

This research focuses on the water quality impacts along the XBF River from Nam Theun 2 dam in two provinces: Savannakhet and Khammouan. I decided to collect data and information in two ways. Firstly I collected the data and information from the Nam Theun 2 Power Company (NTPC) website and from International Rivers, which has been closely monitoring the Nam Theun 2 Dam and power production. I accompanied International Rivers and the Asian Indigenous Peoples Pact on a field trip to the Nam Theun 2 Dam site, including both the reservoir and downstream along the XBF River in September of 2011.

Another organization who is closely monitoring the project is Mekong Watch. I also used their documents and videos and met with their staff to discuss the impacts from the Nam Theun 2 Dam. I collected information and had discussions with the Japan Volunteer Center (JVC), Croix Rouge Lao Savannakhet, Asian Development Bank (ADB) and World Bank (WB). From

the government I met with the Water Resources and Environment and Public Health offices in Savannakhet Province.

Secondly, I went to live with and interview local people along the XBF River for more than one month. For me it is easy because I am a local person as I was born and grew up in this area. My family is experiencing impacts from the Nam Theun 2 Dam like other local people. While I stayed in the local villages, I traveled to many villages along the river and I interviewed many people from many different professions including: head men of villages, directors of schools, teachers, students from primary and high schools, local doctors, nurses from local hospitals in Vernneua and Puckpeau villages, and monks at temples and villagers. I interviewed more than 55 people from 10 villages along the XBF River. I used my mobile phone to record the interviews and I wrote up these interviews each day.

I attempted on two occasions to meet with NTPC staff at their downstream office in Thakaek, but they refused to meet with me officially. However, International Rivers staff helped me by using some of my questions when they met with NTPC staff and they passed on the information. For most of this project, I focused on the water quality of the XBF River downstream of the dam.

Background

Lao PDR is located at the center of the important Mekong region. Since the Lao Government opened the country to foreign investment, the development of large-scale natural resource extraction projects including hydropower dams, irrigation, road construction, rubber tree plantations, mining, and other infrastructure has created a lot of social and environmental impacts to local people.

Lao PDR is one of many beautiful countries in Southeast Asia. There are many important rivers from the north to the south of the country such as: the Mekong River, Xe Bang Fai River, Nam Theun River, Num Ngum River and many others. At present, there are 16 hydropower dams in operation on rivers in the Lao PDR; seven hydropower dams officially under construction; and 32 hydropower dams in planning stages². Nearly all of the electricity produced is to be sold to Mekong Region countries, particularly Thailand, China and Vietnam. The Nam Theun 2 Dam is at present the biggest dam in Lao PDR. It is located in Khammouane Province, Nakai District and started operations on 8th of October, 2010. 95% of the electricity produced is sold to Thailand, and the other 5% is used domestically³.

I was born and grew up in Ban Puckpuea village, which is located on the lower Xe Bang Fai River. When I was eight years old my family moved to my mother's village at Phon Than which is also near the XBF River. In both of my villages I lived a very happy life as my natural environment was green, the farms were green from rice and vegetables, and the XBF River was clean and I used to swim there with my friends. On the Lao New Year, we celebrated this popular and important festival on many islands in the XBF River. The local people used this time for relaxing after working hard in the rice fields and as is the tradition for this festival, the Lao people would throw water at each other happily.

2) <http://www.adb.org/> and <http://www.rfa.org/lao/khaolao/mekong/laos-hydro-power-dams-06292011121143.html>

3) http://www.poweringprogress.com/index.php?option=com_content&view=article&id=47&Itemid=77

Nowadays the XBF River is suffering from the Nam Theun 2 Dam, because the dam is releasing dirty water into the XBF River at Mahaxay District and creating difficulties for the local people downstream. For example, the local people cannot hold the Lao New Year celebrations on the islands in the XBF River, as these islands no longer exist. The water level of the XBF River changes every few days and the water quality is so bad that it cannot be used for drinking or any other usage in the dry season.

The Nam Theun 2 Dam Reservoir

The reservoir of the NT2 Dam is located on the Nakai Plateau and is called the Nakai Reservoir. It has a surface area of 450 KM² at full supply level and a total storage capacity of 9,310 million m³ of water. The water from the reservoir drops about 350 M through a tunnel to the power station. From the power station the water then flows into a regulating pond and then via a 27 KM downstream channel into the XBF River. The project transfers an average annual flow of 220m³/s from Nam Theun into the XBF River⁴. The Nam Theun Power Company did not clear all of the vegetation in the reservoir so the water flooded thousands and thousands of trees. Through personal communication with the Campaigns Director of International Rivers, Ms Aviva Imhof noted that:

“The water from the reservoir travels through to the power house station to produce electricity which then flows into the regulating pond which takes one week. When the water travels through the power house station, it becomes very hot and loses oxygen.”

This means that the water going through the power house station is of poor quality and lacks oxygen; therefore, the water is not fit to be used for daily activities such as: washing clothes, bathing, or as drinking water for people and animals. Along the channel from the power house to Yommalad District, a fence has been built to protect people and animals from drinking and using the water.

Research Location

The XBF River originates in the Boualapa District, before flowing into the Mahaxay District and then the river then flows through the Xe Bang Fai District before entering the lower Xe Bang Fai floodplains where it forms the southern border of Nong Bock District in Khammouan Province, the northern border of Xaybuly District, Savannakhet Province. The Xe Bang Fai River finally flows into the Mekong River at Keau Xe village, Nong Bok district, Khammouan province. The research area located is along the XBF River from Cheang Sa Vang village, Mahaxay district, Khammouan province, crossing the National Road Number 13 to Puckpeua Village, Xaybuly district, Savannakhet province. The research area covers two villages along the river banks at Mahaxay, one village along the river banks at Nong Bok district in the Khammouan province and seven villages along the river banks at Xaybuly Districts, and Savannakhet Provinces.

4) www.poweringprogress.org

The Xe Bang Fai River or Nam Xe

The Xe Bang Fai River is also called the Nam Xe and is one of the many branches of the Mekong River. It is located in the center of Lao PDR between two provinces, Savannakhet and Khammouan. The Nam Xe is the same as other rivers in Lao PDR: in the rainy season there is more water in the river and the water flows fast and in some years floods over the river banks and carries a large amount of sand to the Mekong River. In the dry season the water is clear and blue and the water flows quite slowly with a much lower water level, creating many islands.

For many generations, the local people along the river used the river for drinking water, washing and bathing, and planting the vegetables along the river banks. However, nowadays everything has changed for the local people along the river: they cannot use the river for drinking water and the poor water quality water creates many problems for the local people. The cause of these problems can be attributed to the Nam Theun 2 Dam.

The villagers know well about the impacts from Nam Theun 2 Dam on the XBF River and effects to their livelihoods, but they are afraid to talk about it with people that they do not know. The villagers are afraid because they know the NT2 Dam belongs to the Lao government and they are afraid to show disrespect to the Lao Government. One of the local people from Beung Xe village said:

“Some staff from the NT2 Dam project said to us, ‘don’t talk about the negative impacts you have encountered from the NT2 Dam to anyone who interviews you. If they ask you about compensation, you must say you received compensation from NTPC. If you say that there are negative impacts from the NT2 Dam, it means you are against your government.’ So we don’t talk about any negative impacts from NT2 to outside people.”

Impacts on the People of the Xe Bang Fai River Basin

According to the statistics I obtained from district offices, current research, as well as interviews with villagers, an estimated 120,000 to 150,000⁵ people are currently deriving significant and important livelihood benefits from the Xe Bang Fai River. This population includes approximately 50,000 people living in at least one hundred and twenty five villages located directly adjacent or close to the river banks of the mainstream Xe Bang Fai from its headwaters to its confluence with the Mekong River.

These people rely on their farms and gardens in the wetlands. Their produce is for use for their families, and they sell some to businessmen. They usually have two crops per year in the dry and the wet seasons and use water from the XBF River through pumps to channels to their rice farms. They also catch fish from the river which is their main daily food source, and supplement their incomes by selling the fish in the villages and in local markets in the towns.

From place to place, and from season to season, the people living along the Xe Bang Fai River derive diverse benefits from the river. People with different lifestyles take advantage of the natural

5) A survey of river-based livelihood in the Xe Bang Fai river by Bruce Shoemaker Ian G. Baird and Monsrli Baird.

wealth of the river in different ways. Many of these livelihood activities have been occurring on the river for many generations. Now the river has changed because of building the Nam Theun 2 Dam and the lifestyle of local people along the river from Mahaxay District to the Mekong River at Khau Xe District is suffering.

Impacts on the Water Quality in the Xe Bang Fai River

When the NT2 Dam released water into the XBF River, the water in the river changed⁶. Now, in the dry season the water in the river is high, while before the NT2 Dam the water was much lower. The water flow in the dry season was much slower before the NT2 Dam was built. Before the NT2 Dam was built, the water in the XBF River was clean and blue in the dry season – now it is brown and turbid. Since the dam was built, erosion has increased along the river banks due to the water flows in the wet season. The following was a common response from the local people I interviewed:

“Since they started the NT2 Dam, the river banks have eroded significantly. But this year the erosion is even more. We are afraid that the pumps and water pipes that we use for irrigation on the river banks will be seriously impacted by the erosion in the next 3 years and may even fall into the river.”

When I went on a study tour to Yommalat district, Nong Ping village with NTP downstream office’s program on 13th September 2011, I met a staff member from the NTPC who works in the downstream office. He said that it was his job to take a boat along the XBF River each week to monitor the erosion on the riverbanks. In my discussion with him and the headman of Phon Than village, he said:

“I am responsible for running the speed boat along the XBF River and I take photos of the places that have erosion. If you are concerned that your pumps and pipes you use for irrigation on the river banks will be damaged by the erosion then you should take a photo and put GPS data on it and send that photo to the government and then they will send it to us.”

In reality, the local people do not have enough equipment or the technical expertise to do this. They do not feel they can take these problems to the company or to anyone else.

Effects on the Local People’s Drinking Water

As noted previously, before the water from NT2 reservoir came into the XBF River, the water was clean and blue in the dry season, and the water flow was not so strong and did not rise so high. The local people, who live along and near the XBF River, include 183 villages: 82 riparian villages and 101 hinterland villages⁷. The villagers near the XBF River used to use the water from XBF River for drinking every day by making wells in the river banks in the dry season. The local

6) <http://www.namtheun2.com/>

7) <http://www.namtheun2.com/>

people from Puckpeau, Kangpar, Phon Than, Beaug Xe, Mahaxai, Chengsahvang, Palay Dang-sahvanh, and Hardkhamdee villages all consistently said:

“Before they built the NT2 dam, we drank water from the XBF River by making wells in the river banks in the dry season each year and we used the water from these wells for drinking in each house in our villages. Nowadays, we can’t drink water from the river anymore because the water in the river is high, flooding our wells, and the quality of water in the river is so bad for drinking and using.”

The quality of water that comes from the NT2 Powerhouse is poor. The company is aware of this problem, so they have developed a program downstream by digging wells for each village along the XBF River. For example in Ban Puckpeau there are eight wells for drinking and other uses in the village including the temple and school. According to three local people I interviewed in this village:

“They came here to dig 8 wells for us last dry season in 2010. Within a few months the water from these wells was not good quality. The water is salty, has a bad smell, and the water is not clear. Now we can only use one well of the eight, from NTPC for drinking”

It is the same situation in Ban Beaug Xe village. They have eight wells from the NTPC, but they cannot be used for drinking water. Now there is only one well near the primary school in the South of the village that can be used for drinking water. Another seven wells exist, but the water has a very bad smell and is not clean. The villagers are still using the water from the XBF River as they do not have another choice. One of the local people from Beaug Xe said:

“There are 8 wells that NTPC made for us around the village for drinking water and other uses, but we can use only one for drinking water. I want the NTPC to come and fix them again. It is very difficult to find good drinking water and there is just not enough water for drinking in one well.”

These two villages are not alone in these problems with the wells. Many other villages are experiencing the same problems with wells provided by the NTPC. They only hope the NTPC will come to fix them again soon.

The people do not wish to continue to buy drinking water from the drinking water companies around the villages. In the wet season they collect water from the rain and store it in big jars. Some families boil the water for drinking. However, in the dry season they buy drinking water from the NTPC for 3,000 kip for 20 liters. It seems that the NTPC only sells water to some villages that are easy to access by transport.

Effects on the Local People’s Water Use

Before the NT2 Dam, the livelihoods of the local people who live along the XBF River were closely linked to the river for many generations. People used the water from the river for cooking, for bathing, for washing clothes, for drinking water for livestock, for watering the gardens along the river banks, for irrigation of rice in paddy fields, and for the Lao New Year festival celebration. For all these activities, the XBF River was a very important resource. Nowadays the XBF River is

suffering from NTPC releasing water from the dam reservoir into the river, especially in Mahaxay District. One of the local people at Phon Than village said:

“The Xe Bang Fai River is our life and it is the blood for the local people along the river. We can’t live without our river because this river feeds us by providing fish, water to grow rice, for vegetable gardens, for drinking and water to use for our families for many generations until now.”

Nowadays some of these activities have stopped due to the change in water quality in the XBF River. The local people are using the water from the rain in the wet season for drinking and for their families’ use. Some families use the water from their wells that they made themselves and some houses use the water from the XBF River but not for drinking. However, the NTPC is well aware that the quality of water in the river is poor, hence the well development project. As stated previously, only some of the wells can be used due to poor quality water that is too salty to drink and use every day and there is simply not enough water for everyone in the village. Beaug Xe Village has eight wells from NTPC, but only one can be used for drinking. The other seven wells are of such poor quality that they cannot be used and there are 158 houses. The eight wells from NTPC were not enough water for them and now there is only one. One local people from Beaug Xe village said:

“I still use the water from the XBF River in the dry season, because I don’t have any other choice. My house is far from the NTPC well and the well is not good quality. For drinking water I buy it, but in the rainy season I collect drinking water from the rain.”

The exact number of people impacted by this poor water quality is disputed. While NTPC speaks of up to 40,000 affected people, the NGO Environmental Defense speaks of up to 150,000 people. The impacts have been widely studied and have been discussed with local communities that are affected.

The main occupation of the local people along the XBF River is farming. They grow rice twice a year, in the wet and dry season. In the dry season they use water from the XBF River to irrigate the paddy fields. Before the NTPC started to release water into the XBF River, the local people along the river at Xaybuly, Nong Bork, Khauw Xe, and Mahaxay districts used the water from the XBF River for farming. Their crops are their livelihood, the food is for their families and for selling at the markets. Nowadays the water quality of the river is changing⁸. There are more floods in the wet season, and there is more water in the river in the dry season. In the dry season the water quality is not good for farming. When the farmers plant rice and use water from the XBF River, they get eczema/skin rashes on their bodies. Planting paddy, a farmer is often required to stand in water the whole day. According to the one of the local villagers from Phon Than,

“Since they released water from the Nam Theun 2 Dam into the XBF River, my rice is not beautiful or healthy and I can’t get the same amount of rice as I did before the dam was built. I think this is due to the water quality being not so good. But I don’t have any technique for testing the

8) www.namtheun2.com

water in the river. I only compare with my experience growing rice for many years."

However, the local people are still doing farming in the dry season more and more because farming in the rainy season carries more risk from flooding.

Effects on the Health of Local People

Since the NTPC started producing electricity, in the dry season each year, many local people get skin diseases and a type of skin rash/eczema on their bodies after they bathe or go fishing in the XBF River. Before NTPC operated the dam they told the local people that when the dam produced electricity they must release water into the XBF River and it will change the quality of the river⁹. When the local people use the water from the river, some people get eczema/skin rashes, some people fell ill, if their children swam in the river they get rashes and sore eyes. According to one woman from Dangsavanh village:

"For me, when I take a bath or fish in the river, I get skin diseases around my body and it will finish in about one week if I don't touch the river again. It will happen again when I touch the river. I solve the problem by buying medicine from a local doctor for five thousand kip and if I use it for two or three days it will get better."

This problem is a very big issue for local people who still use the water from the river for planting rice in the dry season because they must use water from the XBF River for irrigation and they must stand in the water on their land for planting rice. But the staff of NTPC discussed with International Rivers:

"We are trying to ascertain the cause of the eczema/skin rashes in the villages, as we believe that it is either Cercariae (a snail-like creature), or it may be from Blue Green Algae, though there is no conclusive evidence of this. We (NTPC) have had experts from the Tropical

Medical Institute from Lao PDR, as well as a professor from China looking into this matter but we still have no definite results. We do not believe that it is caused from the NT2 Dam."

According to my experience when I lived on the XBF River for many years I learned about snails since I was a child. I know that these snails did not live in the XBF River because they do not like to live in flowing water and like clear water. The snails only come when a river stops flowing or with minimal flow during the dry season. From my experience as well as many of the villagers I talked with, the snails have never been in the water when it is flowing swiftly which the XBF does all year round. We find it hard to believe the NTPC official's argument that snails are the cause of the rashes. However, nowadays the local people have had to adapt to this problem by themselves by not taking a bath or fishing in the XBF River, unless it is necessary.

9) www.namtheun2.com

Effects on the Fisheries in the Xe Bang Fai River

Fisheries are one of most important livelihood activities in the Xe Bang Fai Basin. Many villagers devote much of their time and energy fishing for food and for money. Fishing activities along the mainstream XBF River are most prevalent in the wet season but there are also some fishing activities in the dry season. According to local people from Tha Dorkham village who run a boat across the river for passengers to go across and back,

“In the beginning of the Nam Theun 2 Dam project, the water was a dark color and some days we saw and caught big fish around the surface of the water in the river, and they looked very tired and nearly dead. The fish were big, about three to five kilograms.”

According to International Rivers and Mekong Watch, the number of fish has decreased in the XBF River since the dam started operating. The NTPC acknowledges that fish numbers will decrease a few years after starting to release water into the XBF River. According to one man from Puckpeau village,

“Since the water quality in the Nam Xe has changed, the numbers of fish have also decreased. I can’t catch the same numbers as I did before the dam. Catching fish in the Nam Xe is much harder now, because of constant water level changes and a much faster water flow. Now I don’t like to catch fish in the river. I catch fish in the lakes, ponds, and small rivers, because I can catch more fish there.”

The livelihood of the villagers along the river has been significantly disadvantaged from the dam and they were not made aware of details about the water quality before the dam was built. During these interviews I found that villagers were lacking in information about water quality. Furthermore, the staff of the NTPC often ignored information given to them from the villages about poor water quality in the river.

Recommendations

The Xe Bang Fai River is the life blood of local people. The river has suffered serious negative impacts on the water quality since the Nam Theun 2 Dam started operation in 2009, so I would like to recommend the following to the Nam Thuen 2 Dam company and Lao government:

- » The Lao Government and the NTPC must disclose information about negative impacts on the XBF River to the villagers along the river.
- » The government and company must provide the people full rights to all information regarding the impacts from the dam.
- » There must be full, open public participation in all levels of decision making.

And recommend to the ADB and WB:

- » The ADB and WB must put pressure on the government and company to follow the signed agreement.
- » The ADB and WB must put pressure on the company to solve the problems about water quality, erosion, drinking water and wells.
- » The ADB and WB need to respond to the local peoples' problems by monitoring the situation directly.

And finally, recommendations to the local communities and some NGOs:

- » The local people and NGOs should build networks to share information.
- » The local people and NGOs should send letters to the ADB and WB requesting that they solve the villagers' problems.

Appendices

The Goals of the Project: The overall goal of the Nam Theun 2 Dam is to sell 95% of the electricity (equal to 1000 MK) to the Electricity Generating Authority of Thailand (EGAT) to bring money to Lao PDR to help develop the country in areas such as education, healthcare, and infrastructure. The other 5% (equal to 70 MK) of electricity is to be used for domestic purposes and to improve the life of the people in Nakai District and along the XBF River. It was asserted by the World Bank and the ADB that the \$250 million in revenue from the NT2 project for the Government of Laos over the 25-years concession would help reduce poverty in Lao PDR¹⁰.

Project Cost

The project cost is 1.45 billion USD¹¹, and has an installed capacity of 1,070 MW. The reservoir area is 450 km² and operation starts 8th October 2010. The “purpose” of the dam was defined as for Lao PDR to export power to Thailand.

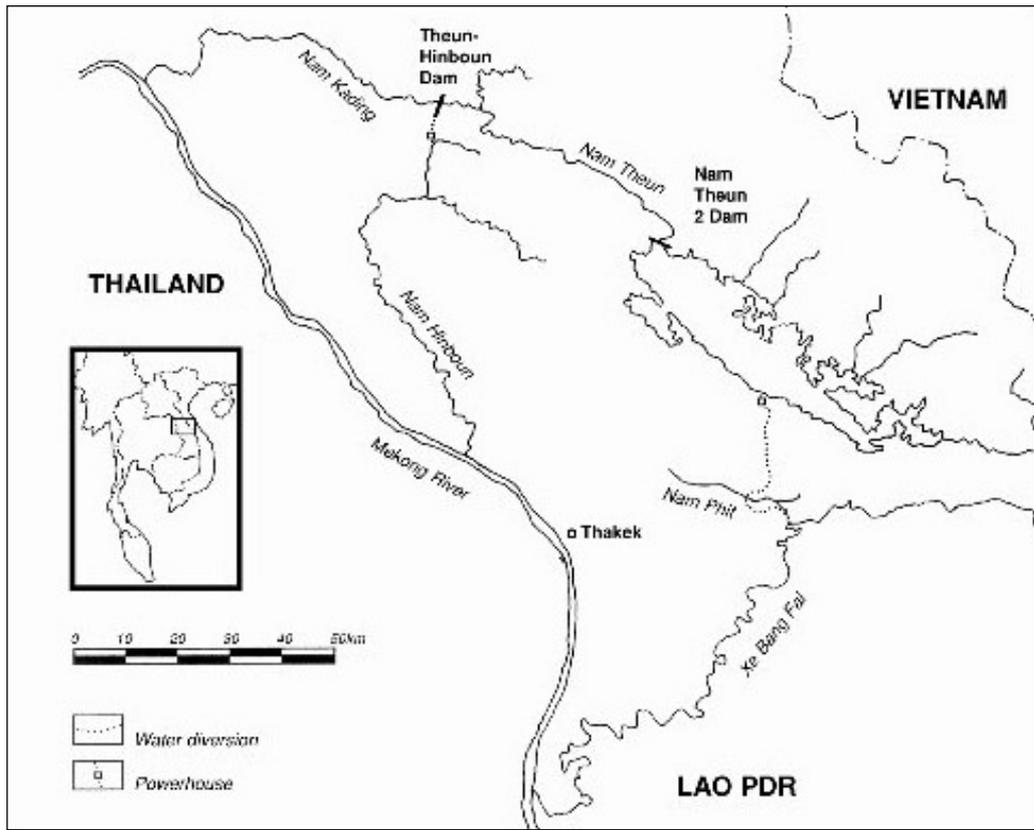
The Project Location

Nam Theun 2 hydropower project is located in Nakai Plateau, Khammouane Province, in Central Lao PDR. The Nakai Plateau will be the main area affected by the project, but the project will also impact areas between the Nakai Plateau and the Mekong River including the XBF River, the Nam Theun River, and along the alignment of transmission lines¹².

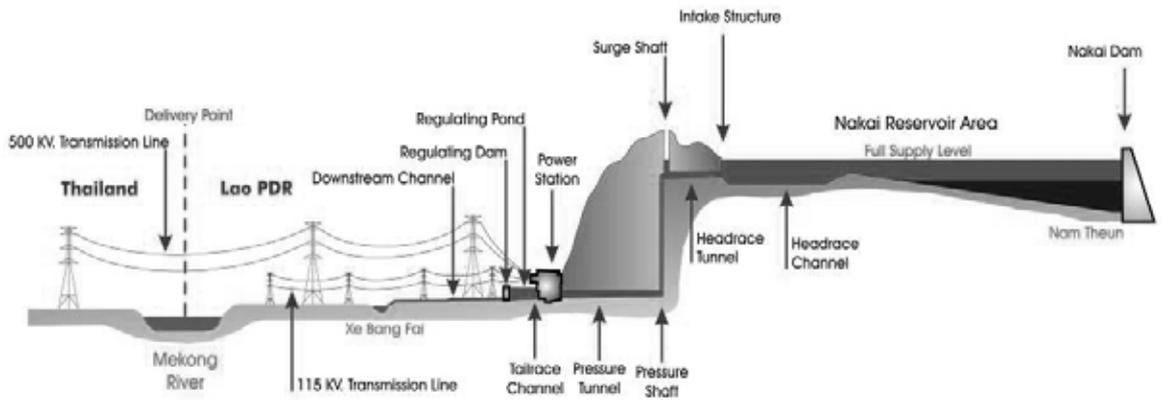
10) Book name: Power Surge. The Impacts of Rapid Dam Development in Laos, Copyright 2008 by International Rivers, Shannon Lawrence, page 42.

11) www.worldbank.org/laont2

12) www.poweringprogress.org



Lowland area lent to the company for rubber nurseries



References

- International Rivers, 2008, Power Surge. The Impacts of Rapid Dam Development in Laos.
- EarthRights, I Want to Eat Fish. I Cannot Eat Electricity: Public Participation in Mekong Basin Development.
- Mekong Watch, 2010, Field Survey Report on the Nam Theun 2 Dam Project Site.
- International Rivers, 2005, A Review of the Nam Theun 2 Environmental Assignment and Management Plan As It Pertains to Impacts on Xe Bang Fai Fisheries.
- MRC, 2009, Integrated Flood Risk Management Plan for Lower Xe Bang Fai area in Lao PDR.
- GOL, Ministry of Industry and Handicraft, NTPC, 2004. Summery Environmental and Social Impact Assessment, Nam Theun 2 Hydro power electric Project in Lao People's Democracy Republic.
- ABD, 2011, Asian Development Bank& Lao People's Democracy Republic.
- Geneve, 2000, Protection of the Human Environment Water, Sanitation and Health Series. World Health Organization Sustainable Development and Health Environments.

Livelihood-Related Conflict Surrounding Dam Construction Planning in Xe Pian – Xe Nam Noi

by Sieng Xe Namnoy

Ms. Sieng Xe Namnoy is an educator at an alternative education project that she co-founded in Southern Laos.

Introduction

Lao PDR is a mountainous country, positioned in the middle of peninsular Southeast Asia. It borders five countries, three of which (China, Thailand and Vietnam) have robust and rapidly expanding economies. Lao PDR has a population of about 5.9 million (National Statistics Centre, 2005), over 80% of which live in rural areas and are engaged in rice-based agriculture and harvesting of forest products.

A major component of the Lao government's poverty alleviation strategy is to produce electricity for export to Thailand and Vietnam. From one angle, this makes sense. While Lao has an average of 3.7 kW/person of hydro-electricity potentially available, Thailand and Vietnam each have only 0.2 KW/person. Statistics such as these inform the government's 'rural development' policies:

Energy consumption per capita is around 25 times greater in Thailand and five times greater in Vietnam than in Cambodia and Lao PDR. Projections on energy demand show the gap widening exponentially. For example by 2020, overall energy consumption in Lao PDR is estimated to be 759 MW, while in Vietnam it is expected to have shot up to 201 million MW. --(ASEAN 2003)

The South of Laos is a major centre for current and planned hydroelectric projects. The Xe Pian – Xe Nam Noi hydro scheme is one of these. It was initially to be built in the late 1990s, around the same time as its sibling, the Houay Ho dam. However, this project was much bigger and much more costly, with financial estimates of one billion US dollars for the project (Sayboualaven, 2003). After the Asian economic crisis, the initial investors pulled out and it has had some

difficulty finding new supporters. At present, the hydro scheme has not been built and there are no plans to begin construction in the immediate future. However, this does not at all mean its impact has been benign.

The Xe Pian – Xe Nam Noi project is located just West of the Houay Ho dam, on the Southeast quadrant of the Bolaven plateau. This area has been the home of Heuny (Nya Heun) and Jru (Laven) ethnic minority groups for hundreds of years. The Heuny ethnic group is a small minority in Laos. According to a 1995 census, there are only 5,152 Heuny people living in Laos (Schliesinger, 2003). They have their own characteristic language, which is related to Oy, Jru and Brao (within the Bahnaric stream of the Mon-Khmer language group). Unlike many lowland villages, the Heuny have no Buddhist temples. They have an animist religion and practices. As a people they seem very helpful to each other, are peaceful and smile often.

Most of the villages in the projected reservoir and watershed have been resettled to an area north of Houay Kong village, also on the Bolaven plateau. The majority of the resettlement occurred between seven and nine years ago. Conditions at the resettlement village are notoriously bad, and have been articulated in several papers (IRN, 1999, Sayboulaven, 2003). Since the publication of the last report on this project by local researcher, Phetsavanh Sayboulaven (researched in early 2003, published 2004), there have been no follow up studies to see whether or not conditions have improved. This present study seeks to fill this gap by providing up to date and detailed information on the reports and perceptions of villagers from Xe Nam Noi village as they approach a decade of living in this new environment.

Background

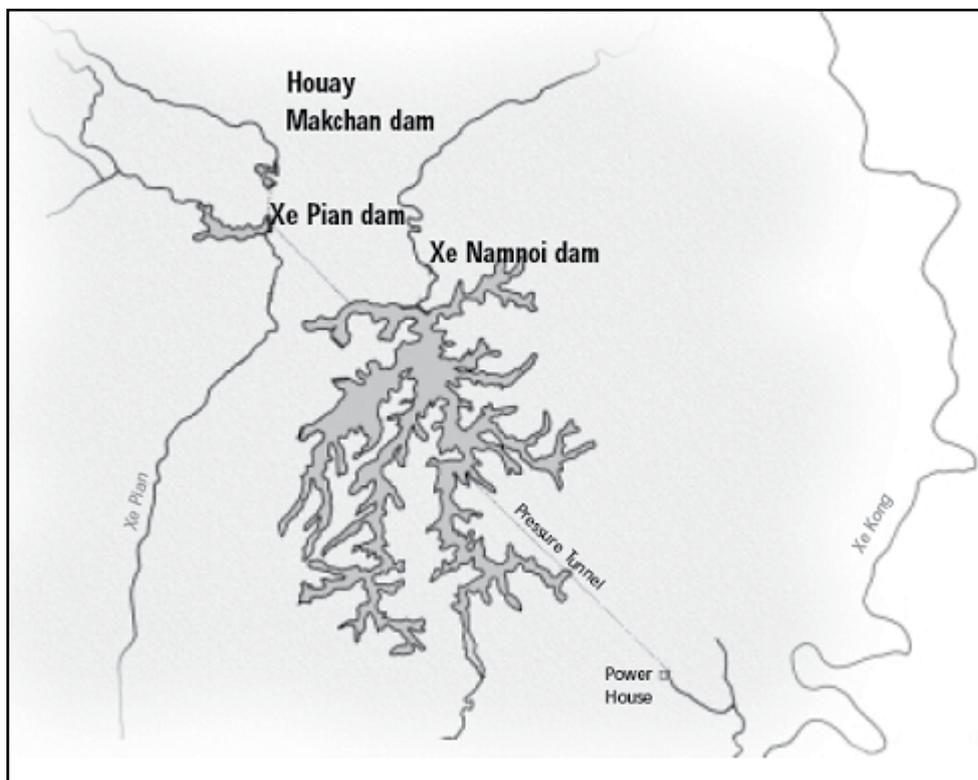
The Xe Pian – Xe Nam Noi Hydro Scheme

Xe Pian and Xe Nam Noi are both tributaries of the Xekong River, which is itself the largest tributary of the Mekong, contributing about 20% of its water volume. Xe Pian runs southward, entering the Xekong along the border of Lao PDR and Cambodia. Although Xe Nam Noi is relatively near to Xe Pian, it runs northward, merging with the Xekong near the provincial border between Xekong and Attapeu provinces.

Researching these rivers presents some difficulty as there is as yet no standard way in which these rivers are written in the English language. Xe Nam Noi is written as Xenamnoi, Xenamnoy, Se Nam Noi and Se Nam Noy in various articles and documents. This has probably resulted in some inconsistency and uncertainty in the quality of the literature on these rivers to date.

The original Xe Pian – Xe Nam Noi hydropower plan involved three separate dams, interconnected by pressure tunnels. The first was to be situated on the Huay Makchan stream, a small tributary of the Xe Nam Noi River. The water running through its power station was to be deposited into the planned reservoir of the Xe Pian dam, just south of it. The outflow from the Xe Pian dam was in turn to be diverted to the much larger, 30 km² reservoir of the Xe Nam Noi dam (Sayboulaven, 2004). Finally, the water from the Xe Nam Noi was to be brought to a powerhouse at the bottom of the South-East side of the Bolaven Plateau by an extremely long pressure tunnel, eventually reaching the Xekong River. Initially, this project was touted to have a

generating capacity of 438 MW, but in recent years this figure has been downsized to 390 MW and sometimes as low as 340 MW. It is unclear whether this is attributed to modifications in the existing plan or closer studies on the economic output of the project.



Map of Dong Ah's proposed Xe Pian – Xe Nam Noi hydropower plan (SOURCE: IRN, 1999)

Progress of the Xe Pian – Xe Nam Noi Hydropower Project

Like the Houay Ho dam, the Xe Nam Noy / Xe Pian hydroelectric project was initially funded by Korean investors who pulled out during the Asian financial crisis. After building some of the roads and moving some of the villagers, Dong Ah stalled the project and never returned. There is some controversy amongst researchers as to the current status of the project (Sayboulaven, 2004). In 2003, a loose partnership of various funders, including the ADB, technical supporters, such as the IUCN and regional governments produced a report on development in the lower Mekong subregion. In the document, entitled 'Protected Areas and Development' (PAD), the authors note that the 'Lao Government approved six hydropower schemes to be built and operated by a Vietnamese state run consortium,' all in Sekong river watershed. This included two dams on the Sekong itself, three dams on the Sekaman River, a major tributary of the Sekong, and one hydropower project in the Xe Pian –Xe Nam Noi area (PAD, p. 35).

While there is no evidence indicating the Vietnamese financiers backed out of this mega

project, the Lao government website on energy development (www.poweringprogress.org) makes no mention of this partnership in their September 2006 list of approved and pending projects. Instead, the website confirms that another South Korean company, SK Energy and Construction (SKEC), has signed an MOU to begin building a 390 MW dam in this area. However, there are no documents on the internet indicating that SKEC will be working in the Xe Pian – Xe Nam Noi area. Instead, there are several news reports suggesting that SKEC will build a 390 MW dam on the Mekong River itself (Asia Pulse News, July 20, 2005). While this latter possibility seems unlikely, doubt is nevertheless cast on who the present funders are and indeed if the project is under consideration by foreign investors at all. Aviva Imhoff wrote recently in Watershed magazine that the Xe Pian – Xe Nam Noi hydro scheme is currently without funders (November 2005-June 2006 issue).

The primary market for the project is also rather obscure. A June 25th, 1998 article in the Bangkok Post revealed that the Electricity Generating Authority of Thailand (EGAD) would be the recipients of the power, under a general agreement between the two countries. This was echoed in a recent report by the Thai government's Thai National Mekong Committee (2004). However, the Lao National Committee for Energy issued a power strategy paper written by Electro watt and sponsored by the ADB, that appears to deny this. This document is also currently on the Lao government's Powering Progress website. Instead, Xe Pian –Xe Nam Noi, along with several dams in the Sekong basin, are considered feasible only if they are candidates to fulfill an agreement between Hanoi and Vientiane to have their electricity exported to Vietnam. This is part of a long term plan to increase the amount of energy exported to Vietnam to 1000 MW of electricity per year by 2010 (Electro watt & Hagler-Bailly, 2001). This suggestion also appears on ASEAN's <http://aseanenergy.org> webpage about Lao PDR export options. Some reports indicate that this suggestion was taken by the Lao government (Lang, 2003).

Thus, both the funders and the recipients of the hydro-scheme are uncertain and perhaps still unestablished. Regardless, the Lao government has been preparing for the hydropower project for several years. Resettling for Xe Pian – Xe Nam Noi began at the same time as resettlement for Houay Ho. It continued for many years, and some villages were moved after the initial Korean company, Dong Ah, had pulled out and the Lao government was without investors (personal correspondence with resettled villagers). The stated justification for the re-settlement was that the area would become part of a protected forest and that the watershed needed to be conserved. Indeed, in some recent documents, in particular the website of the ASEAN Centre for Biodiversity, the South-East area of the Bolaven plateau is listed as a 'protected area.' This area, which includes the reservoir of the Houay Ho dam as well as the projected reservoir of the Xe Pian –Xe Nam Noi hydroplan, encompasses an area of 62,000 hectares.

Unlike the well-known National Biodiversity Conservation Areas (NBCAs), the designation of this region as a 'protected area' is quite vague. The Lao forestry laws define protected forests 'as a distinct category not intended for the protection of biodiversity, environment or culture, but for watershed protection, erosion control, national security, and/or prevention of natural disasters.' (p. 14)

Geography of the Original Villages and Resettled Villages

The original villages of the Heuny and Jru people are just South of the resettlement village. However, despite this relatively close proximity there are important geographical and demographic differences between the two locations. Ban Jat San 8 is located at a lower altitude than the original villages. It is also further from any rivers than most of the other villages are (with the possible exceptions of the Eastern villages of Ban Thongnao and Ban Namhan). Perhaps most importantly though is the significant difference in population density between these two locations. Even before the villages were resettled, the Houay Kong area and villages surrounding it were much more heavily populated than any of the original village areas were. This factor has contributed to most of the perceived benefits and disadvantages of the resettlement.

The original village is also an area of considerable importance for fisheries (Roberts and Baird, 1995), and is heavily forested. There is also some controversy as to whether or not the hydro scheme would impact a biological corridor between the Xe Pian and Dong Amphan National Biodiversity Conservation Areas (NBCAs).

Livelihood in the Past (Xe Nam Noi -the old village)

We arrived at the old village by motorbike. The road was almost completely swallowed up by jungle. However, it wasn't always like this. In the past, the villagers in the old Xe Nam Noi village had dug and flattened a two-kilometer stretch of road leading from the main road to their village. 'The villagers built this road by hand to make access to their village easier. Dealers used to come the village every year in the season when we harvested coffee to buy coffee or rice, or exchange things (like clothes and sugar) for our coffee. We thought that we'd live here forever, so that's why we decided to make this road' said an old man.

Some villagers still return to Xe Nam Noi, but they stay with relatives in Nam Kong, which hasn't been completely destroyed yet. The old Xe Nam Noi village was burnt down, and now all that remains is grass.

In this village, the major crops were rice and coffee, but the villagers also had family gardens (with green vegetables, chili pepper, eggplant, sugarcane, etc.). The agriculture in this village was self-sufficient every year. The villagers never used to go to other villagers to work as labor (for cutting weeds or harvesting coffee and so on). Further, a villager tells me, they grew rice and coffee naturally, never using any chemical fertilizers. The soil was good and the climate suitable for these crops.

'We could harvest coffee by the 3rd year after planting, and were getting good yields by the 4th year,' said a group of villagers.

There was also sufficient space for grazing animals, such as cows and goats.

According to the old men and women, and the youth, they used to get many varieties of fish and other food in the Xe Nam Noi River by traditional techniques. When they would go to get fish, they also would find other food along the river and in the surrounding forest, which is very near to their village too. At other times they would go to hunt wild animals in the forest. The villagers said that they 'can find many kinds of food in the forest: vegetable, fish, bamboo, birds,

rats, and so on. All of these were very close to their village.'

In the past they built their houses to meet the needs of their families. Small families had smaller houses and bigger families had larger homes.

There was a school, but it was at least six kilometers from the village. Many children did not go to school. There was also no hospital near the old village, but the locals had access to medicinal herbs in the forest for some of their illnesses.

Livelihood in New Village: Ban Jat San 8

Perceived Negative Aspects

The villages were relocated to an area called 'Ban Jat San 8', located just North of Houay Kong (see map above). According to the government chief of Ban Jat San 8, before resettling, there were already 16 villages in this area. The people living there were of another ethnic minority, known as Jru (Laven in Lao language). Jru people used this land for many years, for growing rice and coffee. Although the Jru people were compensated for their loss of land, there has been a lot of subsequent resentment and some disputes over land-use. The resettled villages have found it very difficult to produce sufficient agricultural yields now, partially because the land that the government gave to them is not enough per family. To compound on this, the new location also has many stones and the pervasive weed, *Imperata Cylindrica* (Nya Kha). As a result, they began seeking new land in the area, but all of it already belongs to local villages.

Now they face agricultural problems on their farm that they have never had to deal with in the past. The increased population density has seemed to increase livestock and crop diseases. For example, they have had many of their chickens and pigs die recently. Also there are insects from the weevil family (maeng mot) that bore holes in the coffee stems, and some villagers are now experimenting with chemical pesticides in order to protect their crops. These problems have only emerged in the past three or four years, with 2005 being the worst year so far for insect damage. Even the Jru people, who have been living in the Houay Kong vicinity for a long time and undoubtedly have extensive ecological knowledge of the area, are unsure what to do about these new problems.

"In a few more years there will be not enough land to grow sufficient rice or gardens for their children as the population here is increasing everyday."

- Anonymous man

In addition to these difficulties, they also don't have forest near the resettlement villages to find food. The rice and coffee they grow is sufficient to provide for a families' needs for about 3 – 6 months a year, so villagers now have to go to work as labor in bigger farms nearby, which they have never done in the past. This usually involved cutting weeds or harvesting coffee, sometimes for the big Lao coffee company, Dao Huang, who comes and picks them up during coffee season in trucks.

“Before, I never worked as a laborer. But now, I work for a low salary to buy rice for my children. I have to continue this difficult life even though I don’t want to. In the beginning I felt shy to work as a laborer, now I am used to this feeling. My family lives day to day. I go back to the old village every year during coffee harvesting season because I have a garden over there. I also have swidden fields but I don’t do any more because it is too far from here.”

-Anonymous woman

Many people seemed to still use the old village, residing there for up to several months a year:

“There is no place to feed my goats in Ban Jat San 8. If they don’t allow me to let them graze in the old village I don’t know what I’ll do.”

- Anonymous man

“My pigs and chickens are almost all dead; I tried to inject them with medicine from the provincial agricultural department, but it didn’t stop the disease. I worry a lot about this.”

- Anonymous woman

“Unlike the old village, here, after planting the coffee saplings, the trees bear no fruit for at least seven years. Actually the yields aren’t sufficient until the eighth year.”

- Anonymous villager

“Now my house is too old but I can’t repair it because there is no forest to find wood, so I use old and broken boards to fix it.”

- Anonymous hospital worker

An old man said when they moving house in the beginning he had to sell his jars, which are an heirloom item from his grandparents.

Perceived Positive Aspects

An 18-year-old woman, who left school two years before graduating, explained that she likes the new village. She said the new village has a street, a school, a hospital and that these things are very convenient compared to the old village. It is also much easier to meet new people.

A woman, head of a family, has four children. She also said that she prefers to live in the new village, for the future of her children. They can go to school and a hospital near her house. It is also easier for her to visit her mother now.

In addition, we interviewed an elderly couple, while helping them harvest coffee. They have only one child, a son who works in Pakse. They like to live in the new village more than the old village even though there are no places to find food. Their reason is that it is easier for their son to visit them often and there is a hospital and street near their village.

In conclusion, most of the people who prefer the new place do so because of a few points: ease of access to a school, a hospital and a street.

Youth, in particular, enjoy the new location because they have more friends and it is also easier to meet each other, go to school, etc.

Government and Business Compensations

The government has built a house for every family that lives there. The house is suitable for small family, there are two rooms and a balcony, but there is no kitchen or washroom. In addition, each family was provided with about 1 hectare per family for growing when they initially moved to the village.

According to Boualaven (2003), the hospital was never open because of a lack of staff. Now, however, it is open two times a week.

Initially, villagers were compensated with rice. Now, despite the fact that their families have increased in size but their land has remained constant, the compensations have stopped.

Demands of the Villagers

There are several demands that have been repeatedly made to the government, but which have not been met. Many people there really want assistance learning about how to deal with agricultural conditions. They would like skills and techniques to deal with pests, diseases and fertilizing their coffee and rice. They explain that their techniques in the old village aren't transferable to the new location and that they don't know enough about the new environment.

In addition, there is not enough water to use. While there is a hand-pumped well, it does not provide enough water to meet everyone's needs, especially when nearby villagers come to use it. There are several other pumps that have broken, and requests to have them fixed have not been met yet. Villagers would like access to reliable water, as they had had in their former villages.

Thirdly, although the villagers were moved almost 10 years ago to make way for a hydroelectric dam, they themselves were not given electricity. They have proposed to the government but have not been answered until recently, when officials have told them that they will provide electricity sometime in 2007.

Conclusions

This ethnic group was moved by the government. They were ordered to leave their motherland

where they have lived for long, long time. The government told them that they wanted to protect the forest and watershed and that moving them was necessary for the development of the country. They were told that their life would be much better and that they would have access to many things that they had not had before, including a modern school and a hospital. However, we can see that there still are many problems, and many of these are still the same problems that they had when they were moved during the 1990's. Pests infesting their crops and an increased population growth in the village have created new problems on top of these.

We could make the general observation that both older people and youth who already have a family usually prefer the old village. This seems to be because, with their responsibilities comes a focus on finding food and planning for future food security, both of which are nebulous in the new location. In contrast, the youth, both teenagers and children said that they like the new village because it is near the school, a hospital and especially because it is very easy to go to other villages. As a result, they have more friends because they meet each other at school and go out together on the weekends. From the perception of youth, who don't have the same responsibilities as their parents, but are instead more interested in socializing (especially with the opposite sex), they don't see the difficulties that their parents face.

One could ask the question what the villagers would say if the government decided to build a new school and hospital for them in their old town. In this case, would anybody like the new village? The author doubts it. The heritage of the people lives in the old village. Those who remember it say that they miss their hometown. They explain that their parents died over there and that they have many memories over there.

Some NGOs have decided not to assist the villagers who have moved to Ban Jat San 8. Essentially these organizations see aid as facilitating government initiated human rights abuses (Baird and Shoemaker, 2005). World Vision was criticized amongst the NGO community for initially providing funding of over \$100 000 USD while the government was conducting resettlement for the Houay Ho dam (IRN, 1999, p. 44).

However, indirectly, there may be one good thing that has come out of this resettlement. As a result of the impacts of this development project, the Heuny people are much more inquisitive and skeptical about government plans in the area. For example, a 68-year-old man heard news that the government was planning on digging a mine in the protected area from which they were resettled. Unlike during his resettlement though, he was far from unquestioning. He asked: "What effects will this have?" In particular, he wondered about the safety of his goats, which he still feeds over in the old village. As more and more large-scale development projects cause negative impacts on villagers throughout Laos, villagers' trust in their government withers away. The author has also observed this in the rubber plantations across Bachieng district, Champasak province.

The fact that up to 70% of the villagers in Xe Nam Noi still go back to the old village and that two villages, Nong Phanouan and Houay Chote, have refused to move entirely, suggests that a quiet rebellion may be brewing in the region. Time will tell whether the accepting and tolerant Lao people will begin to stand up against what they perceive as unjust.

Watering Down the Law

A Legal Analysis of the Proposed Lower Sesan 2 Dam Project

by Panha

Mr. Panha is a Human Rights Lawyer for Legal Aid of Cambodia, providing legal representation and advice to low-income and indigenous people and conducting media advocacy in support of communities struggling to protect their land rights. He also organizes awareness raising workshops for community leaders, the judiciary, and law enforcement officers to promote legal empowerment.

Executive Summary

The proposed Lower Sesan 2 Dam project has captured attention on the national, regional and international stage, and particularly from the local people who will be affected by the dam. In response to this attention, this research investigates what domestic, regional and international laws will be violated if the LS2 Dam project is built.

This research demonstrates that the LS2 dam project has failed to meet the standards of domestic, regional and international laws. Under Cambodian domestic law, the obligation to protect the environment and natural resources is one duty that will be violated if the LS2 Dam project is constructed. There will be a massive loss in the number and quantity of fish species, as the dam will block fish passage upstream to the Sesan and Srepok Rivers. Under Regional Law, the 1995 MRC Agreement will be violated because so far, there is no evidence showing that the LS2 Dam project owners provided notice to the Joint Committee of MRC. Finally, the research shows that the LS2 Dam project will also violate several international laws that the Cambodian government has ratified. The Right to Food, which is the most important example of many violations, will be violated if the Cambodian government does not make a strong commitment to protecting its people from future devastation from the construction of the LS2 dam.

All evidence reveals that despite the Cambodia Government's hope that the LS2 dam project will produce electricity benefits, the LS2 dam will seriously violate the rights of communities along Sesan and Srepok River.

Introduction

This research was born of the Royal Government of Cambodia's attempt to construct a project called the Lower Sesan 2 Dam on the confluence of the Sesan and Srepok Rivers in Stung Treng Province, Cambodia. The research focuses on the situation of the LS2 Dam project through the lens of domestic, regional and international law. It analyses the project's failures in following the law. This research is important because presently, the Lower Sesan 2 Dam project is moving forward without adequate information and research. Even though the LS2 dam will not be located on the Mekong River, it is on a tributary of the Mekong and will cause many impacts on the Sesan and Srepok Rivers. This research will help local communities and NGOs reveal this matter to the international community, especially countries that have influence on the Cambodian government, to show more concern. Additionally, this research will aid local communities and NGOs in their efforts to stop the project by providing them with legal information on the dam and knowledge of legal procedures to aid them in campaigning for their rights.

Background

Electricity prices in Cambodia are the highest in the ASEAN region. The average price of electricity in Cambodia is \$0.16 per kilowatt per hour and can be as high \$0.90 per kilowatt-hour in remote rural areas¹. 83.6% of Cambodia's people use firewood as their main type of fuel for cooking, and diesel serves as the main source of energy for other household usages. 26.4 percent of Cambodian households use electricity as their main source of light². Only 20 percent of the population has access to grid-based electricity.

In order to liberate the country from the high cost of and demand for electricity, the Cambodian government has attempted to attract investment in Cambodia's hydropower resources. Countries such as China, Vietnam and others have stepped into the field. On 15 June 2007, Cambodia's Ministry of Industry, Mines and Energy and Electricity of Vietnam (EVN) signed a memorandum of understanding. A joint venture between the Electricity of Vietnam (EVN) and The Royal Group Company of Cambodia agreed to conduct a feasibility study to build the Lower Sesan 2 dam project on the confluence of the Sesan and Srepon Rivers in Sesan District, Stung Treng Province. Vietnam's Electricity of Vietnam holds 51 percent of the venture, while Cambodia's ANZ Royal holds 49 percent of the venture of the \$816M investment. The Lower Sesan 2 Dam will have the capacity to produce 400 megawatts of electricity with an average output of 1,998 GWh per year; the dam itself will be 75 meter high.

Faced with this project, local communities have serious concerns about the dam construction and have called for the Cambodian government, as well as the dam developer, to carry out further studies in order to understand the impact of the project. The local people are calling for development that that does not destroy their livelihoods, but rather improves their living standards.

1) General Population Census of Cambodia 2008

2) <http://www.investincambodia.com/power.htm>

Legal Information

This research does not focus on the social, economic and environmental impacts to the people and environment, but instead will analyze the legal status of domestic, regional and international laws according to the real situation of local communities living along Sesan and Srepok Rivers.

Though Cambodia does have some legislation related to protecting people and the environment, the country remains weak in terms of transparency, accountability and efficiency, making it difficult to enforce those laws. A lack of political will and widespread corruption are the main obstacles to maintaining the rule of law.

National Framework

Violation of Domestic Law: Obligation to Protect the Environment and Natural Resources

Article 59 of the Constitution of Cambodia states that “the State shall protect the environment and balance of abundant natural resources and establish a precise plan of management of land, water, air, wind, geology, ecological system, mines, energy, petrol and gas, rocks and sand, gems, forests and forestry products, wildlife, fish and aquatic resources.”³ An objective of the Cambodian government is: “In developing hydropower resources, the Government will carefully analyze all aspects involved, especially the economic benefits, and the environmental and social benefits.”⁴ Although the Cambodian government has started to develop a legal framework, including water resource management, “the lack of a clear policy and legislation on dam management, exacerbated by weak compliance with, and enforcement of existing relevant legislation, remain critical constraints to the sustainable use and conservation of natural resources and biodiversity in Cambodia.”⁵

Violation of Duty to Protect the Environment and Natural Resources

Construction of the LS2 Dam at the confluence of the Sesan and Srepok Rivers will destroy the environment and natural resources of Cambodia. The river’s water flow in terms of quantity and quality will forever be altered. Rare and endangered species of flora and fauna will be lost, including at least five endangered fish species. There will be a massive loss in the number and quantity of different fish species, as the dam will block fish passage to the upstream areas of the Sesan and Srepok Rivers. Over 100 fish species are found in the river and 66% of these fish are migratory species; therefore, if the dam is built, most of these species will disappear from upstream locations.⁶

3) Article 59 of 1993 constitution

4) Samreth Law Group and Mekong Legal Advocacy Institute. Submission to Mekong River Commission December, 2009.

5) “Scoping Study of Existing Frameworks Related to the World Commission on Dams Strategic Framework – Cambodia” by Sam Chamreoun, IUCN, p.2.

6) http://www.banktrack.org/show/dodgydeals/the_lower_sesan_2_hydropower_project

If the Cambodian government does not establish a precise plan for this project, the environment and natural resources could be destroyed, creating hardship for the local people who rely on fisheries to sustain their life and income.

Public Participation and Access to Information

Article 16 of the Law on Environmental Protection and Natural Resource Management (EPNRM) states “The Ministry of Environment shall, following proposals by the public, provide information on its activities, and shall encourage participation by the public in environmental protection and natural resource management.”⁷ The idea of this article is extracted from article 35 of the Constitution, which offers the right to Cambodian people to actively participate in political, economic, social and cultural life of the nation and states that the government must fully consider any requests from the people.⁸ Article 17 states that “the procedures for public participation and access to information on environmental protection and natural resource management shall be determined by Sub-decree following a proposal of the Ministry of Environment.” Despite this, the state has not yet adapted a sub-decree procedure on public participation.

Violation of Public Participation and Access to Information

The principle of public participation was violated by the LS2 dam project even though the Cambodian Government announced that the affected communities, local authorities and NGOs were fully consulted in the project’s process.⁹

In reality, the rights of local people were ignored, and the ideas of the EPNRM and Constitutional Law were violated. A report, commissioned by the Rivers Coalition in Cambodia (RCC), and written by environmental impact assessment (EIA) and fisheries expert Dr. Ian G. Baird, showed that the feasibility study by PECC1 failed to consult with communities located upstream and downstream of the dam site and that people located inside the planned reservoir were not provided substantive information regarding the dam’s potential impacts.

Personal interviews with members of local communities in the upstream area of the Srepok and Sesan Rivers in Rattanakhiri Province revealed that the dam developer never came to consult about the LS2 Dam project in their village; the villagers only learned about this project from local NGOs and conversations with other locals. They never had the chance to join in any public consultation related to the dam construction.

Residents of Lamphat village, Rattanakhiri Province, which is located about 60 km from the planned site, strongly criticized local authorities and LS2 dam builder.

“The dam developer never came to my village to make the project public. Furthermore, the local authorities told us nothing. I want to know about the project. I want to know what is the advantage and disadvantage about it. So far, I don’t know everything. I think that even though we

7) Article 16 of EPNRM

8) Article 35 of Cambodia Constitution.

9) Letter of Prime Minister Hun Sen to Parliament on July 28, 2011.

are the local people, we don't have any rights," a 47-year-old said.

Meanwhile, the chief department of agriculture in Rattanakhiri province said, "So far, I don't have any information about the LS2 dam project. I don't know about impacts on farm lands, forest areas and other impacts on Rattanakhiri province at all. I think that the LS2 Dam may not affect people upstream in Rattanakhiri province."

Public participation and access to information is very meaningful to affected people and all relevant stakeholders. They require accurate information and a chance to participate in the process of the proposed dam.

Possession Rights and the Right to Apply for Ownership

Land ownership was dissolved and land records destroyed during the Khmer Rouge reign from 1975 to 1979. In 1992, the Land Law was adopted in order to step away from the centrally-planned socialist state and to formalize the means of acquiring land ownership. Article 74 of the 1992 Land Law explains that land possession for five years and meeting five conditions can be transferred into full legal ownership.¹⁰ The 1992 law was replaced by the 2001 Land Law, the objective of which is to determine the regime of ownership for immovable properties in the Kingdom of Cambodia in order to guarantee the right of ownership and other rights related to immovable property.¹¹ Under this objective, the right to ownership of immovable property from any violations of private individual and public is protected by the 2001 Land Law. Under article 38 of 2001 Land Law, "The occupation permit possessor becomes the ownership of the land if the possession shall be unambiguous, non-violent, notorious to the public, continuous and in good faith."¹²

Violation of Possession Rights and the Right to Apply for Ownership

This research shows that most of the people living in the reservoir site of the LS2 Dam in Stung Treng Province, including Srekor 1, Srekor 2, Kbal Romeas, Phluk and Sresronok villages, will be faced with relocation. They have no land title or title of possession to immovable property; most people have only a Family Certificate, an Identity Card, or a Voting Card to prove their existence. Even though they have no Land Title or Title of Possession to immovable property, most people have an action living on their land since 1979. This action is guaranteed by article 38 of the Land Law, which considers them as possessors if they occupied on their land before 30 August, 2001, when the Land Law come into effect,¹³ and any relocation must be agreed upon by the local people.

10) Losing Ground: Cambodia's Land Law. September 2009. Page 65.

11) Article 1 of Land Law of Cambodia

12) Article 38 of Land Law

13) Article 38 of Land Law

"I am a local authority; I want to cry when I hear about the LS2 Dam construction. I don't want to have a project like this. Our Land is our ancestral inheritance for our young generation. Resettlement means the loss of our ancestral land. I don't agree with the project."

- Commune Chief of Srekor, Stung Treng Province.

According to the PECC1 feasibility study, it is expected that 1,059 households (332 from Srae Kor Commune, 453 from Kbal Romeas Commune, 267 from Ta Lat Commune, and 7 from Phluk Commune) would have to be resettled as a result of the dam (KCC 2008a)¹⁴. However, KCC (2008b) reported that 4,754 people in 1,052 families would need to be relocated. According to PECC1 (2008a), 613 households (332 from Srae Kor Commune, 267 from Kbal Romeas, and 14 from Phluk Commune) and 2,777 people are expected to be relocated. The exact number of people that would need to be relocated is, thus, unclear.¹⁵

Regarding to a detailed planning for Resettlement/Resettled Cultivation Areas, the Vietnamese company EVN has proposed four types of houses to the affected people. The house size which people get as compensation will follow the number of people living in their house.

Type 1: Area 40 M2 (For households with 1-2 Persons)

Type 2: Area 55 M2 (For households with 3-4 Persons)

Type 3: Area 70 M2 (For households with 5-7 Persons)

Type 4: Area 80 M2 (For households with 8 Persons and More)¹⁶

The resettlement policy has received angry responses from the affected people and it will violate the right to ownership if the project is built. Preun Heng, the deputy chief of Srekor 1, Stung Treng Province noted that "the LS2 Dam project will force us to relocate from our home to live in a new place which is far from river by around 25 to 40 kilometers. Cultivation land at the new site is not rich because it has small stones and sand, which makes it difficult to do rice farming and is far from a water source." Heng further commented that "the compensation the company proposes to offer us will build the house depending on the number of people in a household. We disagree with this policy. Our present house is big in size, with a good quality of wood. The compensation is not fair for us."

Article 5 of the 2001 Land Law provides the right to the government to deprive ownership from people in the public interest, but the ownership deprivation may only be carried out after an advance payment of fair and just compensation.¹⁷

Cambodia has no Resettlement Law yet, but the forms and regulations of deprivation are stated in the 2010 Expropriation Law. Under the Expropriation Law, only the state is authorized

14) Key Consultants Cambodia (KCC) is a private company licensed by Cambodia Government to conduct the EIA for the Lower Sesan 2 Dam.

15) Ian G. Baird. "Executive Summary". Best Practice in Compensation and Resettlement for Large Dam. The Rivers Coalition in Cambodia, May 2009.

16) Report on Construction Design Measures of PECC1, Cambodia May 2011.

17) Article 5 of Land Law

to deprive land or ownership from people.¹⁸ The LS2 Dam project received a license from the Cambodian government, but the operation is under a private company, so the land deprivation should follow the local communities' will and people should get fair and just compensation before they are forced to move to a new place.

Right to Access Non-Timber Forest Products (NTFPs)

The Forestry Law was adopted in 2002. Its objective is to ensure the sustainable management of Cambodia's forests for social, economic and environmental benefits, including conservation of biological diversity and cultural heritage.¹⁹ Article 2 of the Forestry Law states that the duty of the "State-Cambodian government- ensures customary user rights of forest products & by-products for local communities..."²⁰ In addition, article 40 states that "For local communities living within or near the Permanent Forest Reserves, the state shall recognize and ensure their traditional user rights for the purpose of traditional customs, beliefs, religions and living. The traditional user rights of a local community for forest products & by-products shall not require a permit."²¹

Violation of the Right to Access NTFPs

NTFPs play a prominent role in the lives of people living along the Sesan and Srepok Rivers. A baseline survey by the NGO Forum showed that throughout the Srepok River basin, people are heavily dependent on forest products, including wood, bamboo, medicinal plants, wild fruits, vegetables, honey, resin for sealing boats and making torches and mushrooms. NTFPs contribute a major part of family income as well.²²

Moreover, research on livelihoods and the family's profiles of people from 15 villages along the Sesan River in Stung Treng Province revealed that the villagers collect NTFPs as an important part of their income and for everyday life. The people collect NTFPs such as honey, liana, bamboo, bamboo shoots, resin, rattan, wild animals, potatoes and mushrooms.²³

Building the LS2 dam will flood the forest and relocate the people that depend on NTFPs for their family income and daily food. Furthermore, there is no benefit from LS2 dam project for affected communities living along the Srepok and Sesan rivers. Moreover their livelihoods will be diminished. The evidence shows that the livelihoods of local people will be threatened and their right to access NTFPs, which is protected in the Forestry Law, will be violated.

18) Article 7 of Expropriation Law

19) Article 1 of Forestry Law

20) Article 2 of Forestry Law

21) Article 40 of Forestry Law

22) Swift Peter. "Livelihoods in the Srepok River Basin in Cambodia: A Baseline Survey". Collect of Forest Product. Published by the NGO Forum on Cambodia, 2006.

23) A research on livelihood and Family's Profile of people 15 villages along Sesan River, Stung Treng Province, June 2008.

Regional Framework

The 1995 Mekong River Agreement

The 1995 Mekong River Agreement is a regional multilateral treaty that aims for the governments of The Kingdom of Cambodia, The Lao People’s Democratic Republic, The Kingdom of Thailand, and The Socialist Republic of Vietnam to cooperate in all fields of sustainable development, utilization, management and conservation of the water and related resources of the Mekong River Basin including, but not limited to irrigation, hydro-power, navigation, flood control... and to minimize the harmful effects that might result from natural occurrences and man-made activities.²⁴

Violation of Duty of Notification

The Agreement states that a proposed development, or “intra-basin use” (such as a dam), on a tributary is subject to notification.²⁵ For the purpose of “notification”, the agreement requires each State to provide the Joint Committee with timely notice of an act that would affect water flow, to “allow the other member riparian to discuss and evaluate the impact of the proposed use upon their uses of water and any other affects.”²⁶

So far, there is no clear evidence that the Cambodian government has notified the Joint Committee of the MRC about the LS2 dam proposal yet. Even if the LS2 Dam is not built, the Cambodian government will still violate the MRC agreement if it does not provide notification to the Joint Committee.

International Framework

The Right to Food

The right to food is a fundamental human right. According to article 25(1) of the UDHR, “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food...”²⁷ It is also a key provision of ICESCR²⁸ article 11 (1) that is the fundamental right of everyone to be free from hunger. This obligation has been further elaborated upon by the Committee on Economic, Social and Cultural Rights (CESCR), in its General Comment Number 12.

24) Article 1 of MRC Agreement

25) Article 5 of MRC Agreement

26) Article 5 of MRC Agreement

27) UDHR, art 25(1).

28) ICESCR, art 11(1)

Violations of the Right to Food

For communities living along the Sesan and Srepok rivers, their livelihood depends on rice cultivation and catching fish. Following the construction and operation of the Yali Falls Dam on the Sesan River upstream in Vietnam, the people downstream strongly criticized the project for the decline of fish in the Sesan River; construction of another dam such as the LS2 Dam will create a more severe shortage of food and make it more difficult for local people to sustain their lives. According to a report on livelihood and flood problems of people living in 15 villages along the Sesan River in Stung Treng Province, fishing makes up 66 percent of the people's income.²⁹

Meanwhile, a report entitled "Sesan River Fisheries Monitoring in Rattanakhiri Province" stated that a few species have reportedly either disappeared entirely from fish catches or have declined more than others. For example, the nests of some fish species, like *Channa micropeltes* and *Osphronemus exodos*, have been washed away by water surges, resulting in decreased breeding success; additionally, the deep water habitat of other species has declined significantly.³⁰

Furthermore, research on the LS2 Dam by Ian G. Baird found that at least 38,675 people, including a large number of indigenous peoples, in at least 86 villages along the Sesan and Srepok rivers and in the reservoir area would lose access to the vast majority of their fisheries resources because the dam would block fish migrations from the Mekong and Sekong rivers up the Sesan and Srepok rivers. In addition, at least 87 villages in Cambodia located along tributaries of these two rivers would also lose access to migratory fish. In total, at least 78,000 people living upstream of the Sesan 2 Dam site are expected to lose access to migratory fish.³¹

Local villagers have confirmed the dramatic decline in fish populations in their villages and other areas. Phi Kuy, the chief of Teip Lor village in Veunsey District in Rattanakhiri Province said,

"When I was young, I went to catch fish in the river. I threw the fishing net into the water only one time and I could feed my family for two or three days. In the past, our village never sold fish like we do now. When villagers caught fish, we shared them with one another. Now if we want to eat fish, we need to pay money because people are having difficulty catching fish."

"Even though we are living along the Sesan River, it is difficult for us to catch fish. Fish have drastically declined in the past several years," said Feun Heng, deputy chief of Srekor 1, Sesan District, Stung Treng Province, which is located in the reservoir site of the LS2 project.

The decline in the fish catch will not be the only impact on communities' food security and right to food. The Sesan communities have also noted that a dramatic decrease in agricultural

29) A report of CEPA on Sesan River: Livelihood and Flood Problems, March 2009.

30) Baird and Mean. "Executive Summary". Sesan River Fisheries Monitoring in Rattanakiri Province, Northeast Cambodia: Before and After the construction of the Yali Falls Dam in the Central Highland of Vietnam.3SPN, December 2005.

31) Ian G. Baird. "Executive Summary". Best Practice in Compensation and Resettlement for Large Dam. The Rivers Coalition in Cambodia, May 2009.

products will occur in their village if the LS2 Dam is built.

“Before, we planted rice one time a year, and we could sustain our living for two years. Now we plant rice one time a year, but we cannot feed ourselves for a whole year. If the LS2 dam is built, our rice production will decline even more and our lives will be worsened.”

Personal interview with local villager, 14 September, 2011

By building the LS2 Dam, the Cambodian government would violate international conventions that it has ratified, in particular the right to food stated in article 11 of the ICESCR.

The Rights of Indigenous Peoples

The rights of Indigenous Peoples were recognized by the 2007 UN Declaration on the Rights of Indigenous Peoples (UNDRIP), which is the principle standard that protects indigenous people’s rights from any violations from large scale development projects such as dams. Often, indigenous people are kept out of the planning and decision making process and their rights are ignored. Under the UNDRIP, the principle of Free, Prior and Informed Consent was created in order to fully inform indigenous people about development projects and allow them to reject or give their consent based on their collective decision making process to any project or program.

Article 19 of UNDRIP states that “States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.”

Violation of the UNDRIP

Many indigenous people such as the Kachey, Tompun, Kreung, Kavet, Kachok, Pnong, and Kouy live along Srepok and Sesan rivers in Rattanakhiri and Stung Treng provinces. The dam will threaten their cultures and traditions and ancestral graves because of flooding and resettlement.

Upstream of the LS2 project, indigenous people claim that the company did not count their village in the EIA study. They were never informed about the LS2 Dam by the company; they believe that their communities will not get any compensation when their village is flooded.

“In this village, the dam will flood our ancestral graves that we have respected for a long time. If the village is flooded, we can move our belongings to a safe place, but we cannot move our ancestral graves. We are indigenous people; we respect our ancestors. If our ancestors are angry at us, we cannot live peacefully. Our ancestors will punish us or make us sick if their spirits are annoyed by something.”

- Man from the Kroeng ethnic group in Veunsey District, Rattanakhiri Province.

Villagers in the reservoir site, especially those in Kbalromeas Commune, Stung Treng Province do not agree with the LS2 Dam project and they are worried about losing their traditional ancestral graves that they have respected for generations. The decision-making process never included their ideas and they were kept from being involved in the project. The information about the project is not clear to them yet. “If we get land for house and cultivation as compensation, will it be good for cultivation and can we farm it instantly?” asked Keo Bieb, a villager in Kbalromeas Commune, Stung Treng Province. Chhim Kea, a villager in Kbalromeas Commune said, “We requested that the company find a new place near 7 National Road, but the company didn’t agree.” Furthermore, they expect that the compensation will not be proper and just for them. “The company does not think of indigenous people on traditional issues. The company will give the same amount of compensation money to everybody. Indigenous people submitted a letter to the Cambodian Government to preserve their ancestral graves, but didn’t get any reply,” said a member of the Sam Oeun-CEPA Staff in Stung Treng Province. Additionally, the full EIA has not specified how much spiritual land will be given to indigenous people as compensation yet.³²

Conclusion And Recommendations

This research concludes that the construction of the LS2 Dam on the confluence of the Sesan and Srepok rivers will violate several domestic, regional and international laws. Cambodia has passed many domestic laws such as constitutional laws, the land law, environmental laws, and forestry laws, but all those laws are not yet being effectively implemented. Evidence shows that domestic laws will be violated if the Cambodian government continues to construct the LS2 project. In particular, Article 59 of the Constitution of Cambodia states that “The State shall protect the environment and balance of abundant natural resources...” Under the Land Law, without clear tenure for local communities, the right to ownership, which is stated in Article 38, is also another example of a legal violation if the LS2 Dam is built. Regarding environmental laws, the EIA does not contain accurate data, and many villagers upstream are critical of the company because it never consulted with them. This violates article 16 of the EPNRM. This research found that most of the people who will be affected by the LS2 project have insufficient legal knowledge. The shortage of legal knowledge is an obstacle for them to advocate for proper solutions.

In addition, Cambodia has also signed and ratified several regional and international laws. The MRC Agreement is a regional, multinational agreement which aims to promote cooperation and sustainable development, but the LS2 Dam will not preserve the purpose of the MRC Agreement; furthermore, the potential of development on the Sesan and Srepok rivers will cause deterioration of the related resources and environment in the Mekong River Basin and its tributaries. Under the MRC Agreement, a proposed development, or “intra-basin use” (like the LS2 dam) on a tributary is subject to notification. Cambodia violated the duty to provide notification to the Joint Committee with timely notice of an act that would affect water flow that would have allowed the Joint Committee to discuss and evaluate the impact of the proposed LS2 Dam on their uses of water and any other effects.

Under international law, the right to food, which is stated in article 25(1) of the UDHR,

32) Joint statement National Consultation Workshop on Lower Sasan 2 Hydropower Dam- 400MW-31 May 2011.

will be violated because the villagers along both rivers are extremely dependent on fish and rice cultivation. The villagers believe that their livelihood will be difficult because of fish declines. Some fish species will disappear and thousands of people would lose access to the vast majority of their fisheries resources because the dam will block fish migrations from the Mekong and Sekong rivers and up the Sesan and Srepok rivers. This research also found that the rights of indigenous people would be violated under article 19 of the UNDRIP because their traditional customs and graveyards were not considered as important considerations by the company. Evidence showed that the decision-making process never included their ideas and they were kept out of involvement in the project.

In conclusion, Cambodia has the obligation to protect, respect, and fulfill its own citizens' rights in order to lead the country under the rule of law. Suppression and violation of domestic, regional and international laws create a weak legal system which is an obstacle for sustainable development.

Appendices

Relevant Domestic, Regional and International Articles

Constitutional Law

Article 59:

The State shall protect the environment and balance of abundant natural resources and establish a precise plan of management of land, water, air, wind, geology, ecological system, mines, energy, petrol and gas, rocks and sand, gems, forests and forestry products, wildlife, fish and aquatic resources.

Law on Environmental Protection and Natural Resource Management

Article 6

An environmental impact assessment shall be done on every project and activity, private or public, and shall be reviewed and evaluated by the Ministry of Environment before being submitted to the Royal Government for decision. This assessment shall also be done for existing and in-process activities that have not yet been assessed for environmental impact.

Article 16

The Ministry of Environment, following a request from the public, shall provide information on its activities and shall encourage public participation in environmental protection and natural resource management.

Article 17

The procedures for public participation and access to information on environmental protection and natural resource management shall be determined by Sub-decree following a proposal of the

Ministry of Environment.

Land Law

Article 38

In order to transform into ownership of immovable property, the possession shall be unambiguous, non-violent, notorious to the public, continuous and in good faith.

Article 42

Notwithstanding the foregoing, any person who, due to ignorance or negligence, failed to register his possession has the right to the protections of Article 29, Article 30, and Article 31 of this law.

Law on Forestry

Article 2

This law has extent of application to all forests, whether natural or planted. The State ensures customary user rights of forest products & by-products for local communities and as further provided in the provision of this Law or other relevant laws.

Article 40

For local communities living within or near the Permanent Forest Reserves, the state shall recognize and ensure their traditional user rights for the purpose of traditional customs, beliefs, religions and living as defined in this article.

The traditional user rights of a local community for forest products & by-products shall not require the permit.

Regional Framework

1995 Mekong River Agreement

Article 5. Reasonable and Equitable Utilization

To utilize the waters of the Mekong River system in a reasonable and equitable manner in their respective territories, pursuant to all relevant factors and circumstances, the Rules for Water Utilization and Inter-basin Diversion³³ provided for under Article 26 and the provisions of A and B below:

On tributaries of the Mekong River, including Tonle Sap, intra-basin uses and inter-basin diversions shall be subject to notification to the Joint Committee.

33) http://www.mrcmekong.org/agreement_95/Agreement-procedures-guidelines.htm

International Law

The Right to Food

Article 11.1

The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

General Comment number 12

Normative content of article 11, paragraphs 1 and 2

6. The right to adequate food is realized when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement. The right to adequate food shall therefore not be interpreted in a narrow or restrictive sense which equates it with a minimum package of calories, proteins and other specific nutrients.

Article 25 (1)

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

The Right to Water

Article 11

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent.
2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programs, which are needed:
 - (c) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;

- (d) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

Article 12

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:
 - (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
 - (b) The improvement of all aspects of environmental and industrial hygiene;
 - (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
 - (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

General Comment Number 15

Paragraph 1:

Water is a limited natural resource and a public good fundamental for life and health. The human right to water is indispensable for leading a life in human dignity. It is a prerequisite for the realization of other human rights. The Committee has been confronted continually with the widespread denial of the right to water in developing as well as developed countries

Paragraph 2:

The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses. An adequate amount of safe water is necessary to prevent death from dehydration, to reduce the risk of water-related disease and to provide for consumption, cooking, personal and domestic hygienic requirements.

Paragraph 6:

Water is required for a range of different purposes, besides personal and domestic uses, to realize many of the Covenant rights. For instance, water is necessary to produce food (right to adequate food) and ensure environmental hygiene (right to health).

Rights of Indigenous Peoples

Article 10

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

Article 18

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

Article 19

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

Article 27

States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

Article 28

1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.
2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

Local People's Opinions on the Potential Impacts of the Kamchay Dam

by Peou Chansopheakny

Ms. Peou Chansopheakny has experience working for the Buddhist and Society Development Association's Improving Social Accountability Initiative in Kampong Cham province, and as a court monitor for criminal and civil trials, including land conflicts and human rights cases. She is currently studying for her Masters degree in Canada.

Overview

According to the feasibility study for the Kamchay Hydropower Project, “the project can be of significant benefit to both the national economy of Cambodia and the local economy of Kampot”. The Kamchay Dam is the main point for promoting Cambodian economy and people who live around hydropower location hoped to get so many benefits from the project. In this feasibility study, however, I did not clearly know the impacts and what kinds of damage people would suffer from the Kamchay projects.

Obviously, this study shows what happens to people relating to their livelihood and economy and the wrong processing of Kamchay Hydroelectric Project based on the WCD guidelines. It also shows, through the way Sinohydro implemented the project, how much they care (or do not care) about the environment and natural resources in the protected forests. Finally, the study shows what happened before, during and after this project to the people in the dam areas who depend on the forest for livelihood where the dam site is located. Hence, this report collects the main issues relating to the environment and social impacts and the opinions of virtually everybody involved in the project. It shows the real impacts to people by analyzing the affected people's opinion and what they want to demand of the Cambodian government and Sinohydro for their future lives.

Introduction

In the past, electricity in Cambodia was supplied by fuel and the price was expensive at 30 to 60 US cents per kilowatt-hour. Additionally, the power supply in Cambodia could only provide for 20% of the whole country. As a result, Cambodia in recent years cooperated with China to increase investment in many development sectors, but building hydroelectric power plants is the most famous and has the most potential impacts in the country. Kamchay Dam is the first dam in Cambodia. It is funded by the Chinese Sinohydro Company. This dam is designed so that people living in Kampot Province and half of Cambodia have enough cheap electricity for use.

Unlike other ASEAN countries, Cambodia does not have any large hydropower dams. According to previous experiences with dams in other Asian countries, people living around the dam often lose everything and they are often not satisfied with the dam projects. They have objected to the projects and that their governments protect their livelihoods and environment. The Cambodian government should learn from the experience of its neighbors before approving the Kamchay Dam project. Kamchay Dam is the first Cambodian government experience with hydropower so I would like to study more about it and I hope that this will be useful to all sides: the Cambodian government and people, as well as the company. I aim to identify the problems and weak points so as to prevent the same problems besetting other dam projects. This is especially important because Cambodia in the near future will invest in more hydropower plants as enshrined in the national master plan.

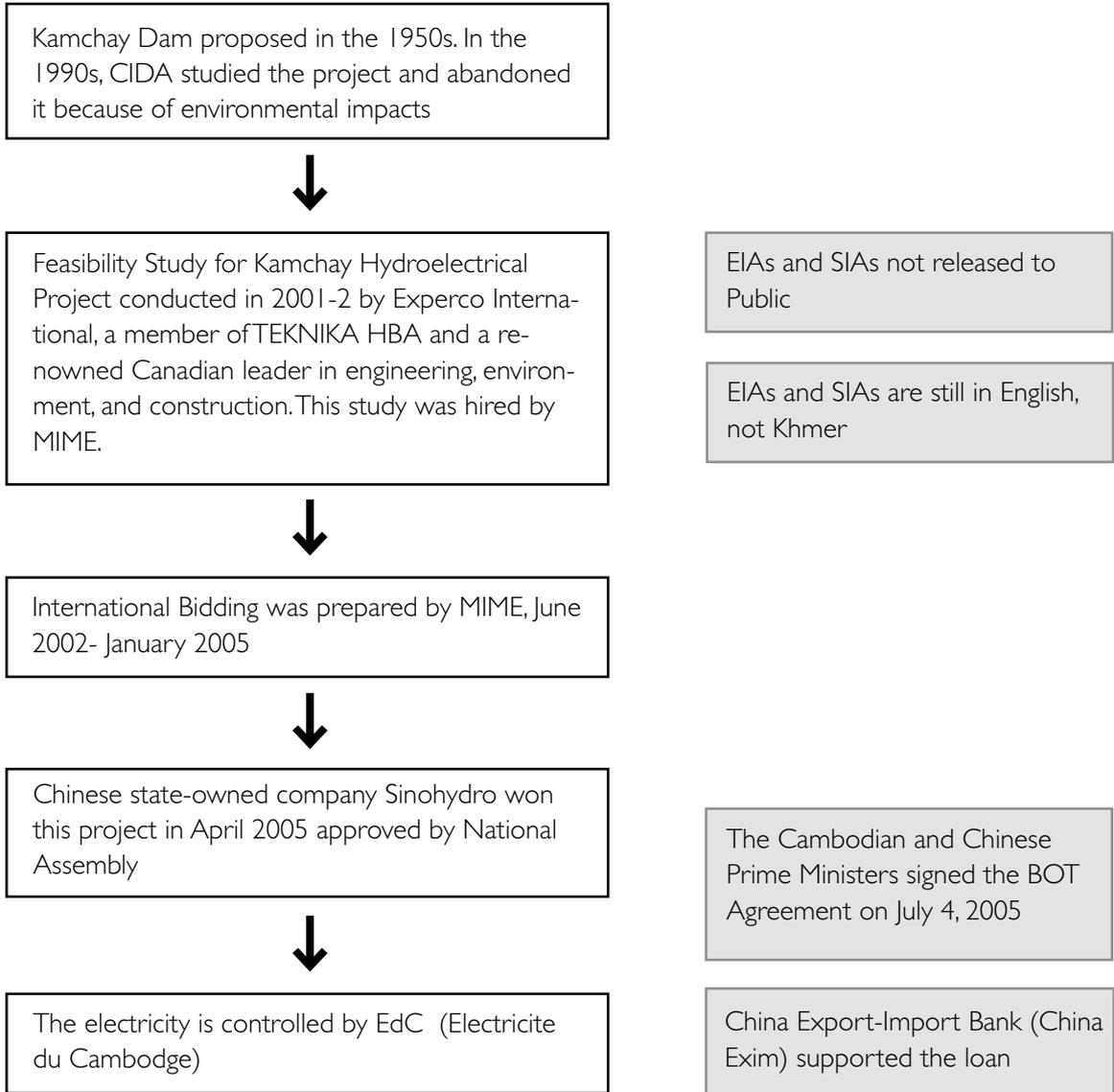
Location

The Kamchay Dam site is situated in Bokor National Park, also known as the Elephant Mountain, in Kampot Province. This area is linked to Makprung Commune and is 3 km upstream from the Tek Chhu Cascade. The population of Makprung Commune is approximately 5,000, with 1,009 families in 3 villages: Wat Kboldommry, Wat Pheam and Snompramphy. The villagers rely on the forest and on farming for their incomes and livelihood. The Tek Chhu Cascade is a source of water around Kampot Province and provides irrigation for the local farmers. This study is focused on Chy Mean and Or Thouch villages, where dam construction has already begun to affect food security and livelihoods.

Kamchay Hydropower Plant

According to the safety manager who controls Powerhouse 2, Kamchay project contains 3 powerhouses (Regulation weir or PH2, Tunnel Power or PH1, and Main Dam or PH3). Powerhouse 2 is going to be 105 m high and 62 m wide and is 90% complete already. Based on a test on 25 September 2009, it will generate 0.08 MW. The safety manager provided some information about project planning such as the price of power will be 800-900 Riel and the hydroelectricity will serve 12 provinces. The economic concession is for 44 years, including 4 years of construction, and the project will require 300 million dollars for operation. This is a BOT (build, operate, transfer) project that began in 2006, and all the powerhouses are scheduled to be finished in 2011. This is the biggest and first dam in Cambodia and will generate 20,000 kWh. Access to other information was prohibited and documents for studying the project were not provided.

Project Structure of Kamchay Dam



No EIA and SIA Disclosure

The feasibility study for the Kamchay Hydroelectric Project was conducted by the Canadian Company Teknika HBA, and was posted on their website but they gave only summary information and did not provide details. The EIA showed that there would be issues related to loss of biodiversity, impacts on Bokor National Park, water quality, river hydrology and sedimentation. The SIA discussed issues related to a loss of income for people who depend on the reservoir area and whose livelihoods relate to park operation and the bathing area downstream.

I know two workshops were organized for conducting the EIA and SIA. According to people who attended the workshops, the organizers did not disclose anything about the project impacts

or the EIA and SIA process, but only mentioned the benefits of the project such as the fact that electricity and water access will be increased, the fishes in the Kamchay River will increase and the mountains will be developed.

Categorically, I can say that the villagers near the dam site project were not invited to the workshop based on my interviews, which shows there is no participation and transparency in the project. On the other hand, even the people who attended the workshop did not understand exactly what the EIA means. People were not informed about the impacts to their livelihoods.

Lack of Free Prior and Informed Consent

In accordance with WCD guidelines, the concept of Free Prior and Informed Consent should be used during the implementation of development projects. It is a system that promotes people's participation in decision-making about projects.

During my research, I found that the people living around the Kamchay Dam were not consulted about their opinion on the hydropower project. The woman representative of Snom-prangpy Village said that the company never came to ask what their feelings were. The village head in Kampong Kreag Commune said that the company went to meet him and asked about the assets of the village such as pagodas, fields, schools and the population. They did not ask whether the people agreed or disagreed with what they were doing.

To sum up, I can say that Sinohydro did not follow WCD guidelines. I suppose that the company knew about the WCD guidelines, but until now I have not seen Sinohydro do anything to upgrade the lives of affected people or protect the environment.

Environmental Impacts

The company had their own policy and they knew how the environment would be damaged, but they ignored what happened in the area surrounding the dam location.

Impacts on Forests

According to an International Rivers Report, "The Kamchay Dam is located within Bokor National Park and will flood 2,000 hectares of protected forest. (Page 2, Cambodia's Hydropower Development and China's Involvement)

In contrast, other sources cited 2600 hectares of flooded land. "...This Three Gorges Dam' in the making will flood 2,600 hectares of the Bokor National Park in Kampot province."(Sam Rith, Phnom Penh Post)

According to an officer of the Environmental Protection Department, both numbers showed are real, but one (2,600 hectares) covers all the areas including the local peoples' fruit gardens and the other (2,000 hectares) refers to the main forestry area alone. Hence, after the dam is built, the forest will be destroyed by the reservoir. Additionally it will rain irregularly and the water will be polluted by the submerged trees.

Not only in the future will the project damage the natural forest but also now the forest is

being cut down and cleared for dam construction. I heard from an officer at the Environmental Protection Department that “1,000 hectares of forest in the dam site have been cut down and cleared.” This means that in addition to the 2,000 hectares that was discussed above, 1,000 hectares have been cleared to make room for the dam, so in total, 3,000 hectares of forest will be lost. Clearing the forest may have already caused Kampot Province to flood unusually two times this year because there are fewer forests to protect against the rain.

There is also an impact on small trees that grow near the Tek Chhu Waterfall, located on the small island. Now many trees have fallen down and died because the strong water flow has caused erosion.

Impacts on Wildlife

According to the officer of the Environment Department, the dam location, Kamchay Mountain, is full of rare wild animals. And these animals are conserved in the National Park and Wild Aid funds this program. There are elephants, tigers, deer and monkeys in this area. During the feasibility workshop, Wild Aid argued that extinction and serious destruction of wild animals would result from dam construction and they objected strongly to the project. Especially, they said that if the government approved this project, they would withdraw all the funds from this conservation project. Actually, the dam project was approved so Wild Aid does not operate in this area anymore.

Impact on Kamchay River Species

“Since the dam construction started, many fish in the river have died because the water was blocked and there is not enough water for fish in the dry season. Also, the water is contaminated with limestone and cement and fish cannot live in such water.”

- Head of Kampong Kreag Village

Flooding

Kampot Province experienced serious floods two times this year. Many people who were interviewed had similar ideas, for example one person said, “I have lived in Kampot for 30 years, and I have never seen a big flood like this. This year was unusual because of the dam construction.” People argued but they did not know the main cause. Some believed that the big flood was a result of natural disasters, not because of the Kamchay Dam. People living in Kampot City had many conflicting ideas relating to flood causes. People directly affected by the dam generally thought the flood was a result of the dam, while those not directly affected thought it was a result of heavy rain and natural disasters.

In my opinion, the two floods this year were because of the dam project. I believe the deforestation caused irregular rain and floods. During this flood there was a lot of damage, for

example, many fruit trees and one suspension bridge collapsed and the road linking Snompraphy to Batkbaldommry was shut down.

Social Impacts

A feasibility study for the Kamchay Hydroelectric Project was conducted by the Canadian Company Teknika HBA and was posted on their website:

The main issues are loss of sources of income for people involved in the harvesting and collection of plant species in the reservoir area, loss of income for those whose economic activities are related to the operation of the park and the bathing area downstream from the dam.

It is important to know whether the information provided is accurate or not. Particularly, they did not indicate the population of people who depend on the forest for their income, especially how much money they earn. How many families are involved in the collection of forest products? If they lose their livelihoods, how can they survive? In this case, if the SIA shows the specific problems relating to people losing their income, why didn't Sinohydro and the Cambodian government address this or develop a strategy to solve the problems or provide new jobs for the people?

Potential Livelihood Impacts

People living around the hydropower site have different kinds of jobs, but they all go to the forest and find many kinds of forest products, including fruits, vegetables, bamboo and wood. Other people, even if they rely on fruit farms, still need the natural water from the mountains to supply their farm. Thus I can say that all people use the natural forest for their economic activities to support their families, children's schooling costs and health care. If they lose their work, they will have a lot of difficulty in their lives.

Impacts on Forest Products

- Lost income: "Since the project started, we have lost 60% of our income. Before, we could collect 5 to 6 baskets of forest products per day, but now only 2 or 3, depending on the day," explained one villager.

- Road access: People complained about the company because, according to a villager,

When the company people are happy, they let us go into the forest, but sometimes they are unhappy and they close the roads for 2 to 3 days. So we have to stop eating rice during that time. Another difficulty is now the company changed the path to the forest for us. The old path was not so high and was easy to travel and transport our goods, but now with this path we need a long time and lot of strength to carry the bamboo or wood. So in one day we can only cut 2 baskets of bamboo.

“Before, my husband used to cut bamboo, but now the path is so difficult and he is old, so we decided to take my child out of school to cut bamboo to feed the family.”

- Villager

Problems Associated with New Job Opportunities

Sinohydro said that the local people could get new jobs. They can work as construction hands for the dam and get a good salary. One villager explained the real situation,

Some people worked for the company, but it is different from our culture. The company pays the salary at the end of the month, and if we make a mistake the company reduces the salary and sometimes they pay late. How are we supposed to wait?

Some families lack money to buy rice so they borrow money from moneylenders and give it back at the end of the month, but they have to pay very high interest on the loans. Their income decreased so they stopped working for the company and went to the forest. “If we go to the forest, when we come back we can get money the same day, not at the end of the month, so that we can afford our daily food,” explained one villager.

The Department of Environment in Cambodia got funding from a foreign NGO to conserve bamboo in this area. One villager said,

They encouraged us to take bamboo trees from Kamchay Mountain to grow on another mountain near here. They provided 100 Riel for one bamboo tree for the whole process, including digging and planting. I did that for 3 days and then I stopped because it is not good pay and it is difficult to find bamboo shoots to take and grow.

This is especially true because the land in the other area is not suitable for bamboo trees because it is a dry and rocky region.

Impacts on Tourism and the Economy

Downstream from Powerhouse 2, there are natural cascades where tourists come to visit and bathe year round. Not only people who live near here, but also people from other villages come to sell snacks, food, fruit and soft drinks for income. All sellers here complained about their income decreasing over the past 2 years since the project started. Particularly, dam construction has caused bad water quality in this area. Tourists who bathed had red spots on their bodies afterwards and complained that their skin was itchy. According to one snack seller, she has lost 70% of her income since project construction began. She said that before the dam, she could earn a maximum of \$30 per day, but now she averages only \$10 per day, and some days she gets only \$3.

Impacts on Water Rights

Water from Kamchay Mountain is the main water resource for all people in Kampot Province. The natural water supply provides people with water for all their needs, such as irrigation for fruit orchards, bathing and cooking.

As a result of the project, the water quality is decreasing. For example, when I went to the mountain, the villagers showed me the place where the company threw limestone into the water channel upstream of the water supply.

In another case, the company did not manage their worker's plastic food wrappers well. We went to the Tek Chhu Cascade and saw a lot of plastic in the trees on the riverbanks. People who live near the Tek Chhu Cascade now face water quality issues. They cannot use the water anymore and they go to take water from other mountains that are quite far away compared to Kamchay Mountain.

Human Rights Violations

Labor Rights

NGOs based in Kampot said that many people who always go to the mountain to find forest products noticed that some Chinese workers were shackled while they were working. They thought those Chinese workers were prisoners who came here for construction work. Another machinist who worked in the tunnel area said he saw Chinese workers whose legs were shackled during work. He argued that the company registered only 20 Chinese workers and never came to the department to clarify the number of workers. The UN came to investigate this case, but they did not have a clear final result.

Infringements on Individual Rights

According to NGOs in Kampot Province, the Chinese company does not respect Cambodian law, and violates human rights also.

This can be shown with two cases of abuse of Cambodian workers related to Battery with Injury. In one case the company accused a Cambodian worker of stealing something in the construction area. The Chinese company did not bring the worker to the police to take legal action, but they beat him and wounded him seriously. In the other case, a Chinese worker beat a Cambodian worker until it seemed he was dead and threw his body into the forest, but the Cambodian did not die and came to sue the Chinese worker.

Cambodia approved the Criminal law to protect the security and also to protect the individual's rights so that people cannot take the law into their own hands and oppress others. The Chinese company employees did not comply with the law; they take the law into their own hands.

Right to Privacy

During construction, Sinohydro abused the rights of people in Kampong Kreag Commune to a comfortable and safe life. In order to finish the project on time, the company worked hurriedly, so they used many cars to carry the stones from other mountains across Kampong Kreag Commune to the dam site. The cars drove all day without taking a break and their noise was a nuisance to people during day and an intrusion in the night. People could not sleep well at night

some days and during the daytime the cars swirled dust and smoke around the houses along the road.

Local People's Opinions on the Kamchay Hydropower Project

The Opinion of a Sinohydro Representative

According to a Sinohydro representative, there are a lot of benefits that Cambodian people will receive when the dam is completed in 2012, such as all of Cambodia getting enough cheap electricity. There will not be electricity shortages in Phnom Penh anymore, whereas right now power is often interrupted a day at a time. Also, the social development, power and infrastructure of cities will increase. As this happens and more people get electricity, Cambodia will change from an agricultural country to an industrial country. He added that now there are 3 factories being built in Kampot Province, and that dams do not cause nuclear and environmental pollution.

From his point of view there are only positive impacts and no negative impacts. In his opinion these positive impacts include that people will get new skills and experiences and change their jobs from farmers to construction workers. After this project is finished, the company will offer certificates to workers for their own use in the future. According to the representative, after the Kamchay Dam is finished, people in these areas will be happy to get more money from the project because they can operate home stays and make a tourist site and have a better life.

The Opinion of the Environment Department Officer

He really did not agree with the Kamchay Dam project, but he did not know how to deal with this problem. He knows the project will cause losses in the environment and natural resources.

The Opinion of Non-Affected People in Kampot Province

One villager in Dong Tong Commune said that everybody, not only in Kampot Province but also in other provinces in Cambodia, was extremely satisfied with the dam construction because in the future the poor will have electricity and water supply for a cheap price. He especially believed this because now there is no access to electricity in his commune. He added that he does not worry about the dam impacts because it is being built in the mountains and far away from his home. Particularly, he thought the hydropower plant affected only the fruit farms such as durian, mangosteen and rambutan, and that the company had compensated the owners already.

The Opinions of Affected People

I told the affected people about the positive impacts that Sinohydro described above. Most of them refused to accept this idea. They said that only a few villagers have worked for the company since the project started. They also added that it is difficult for them to work because when people go to the forest, they can earn money for 1 day but if they work for company, they must wait until the end of month so they lack money to buy food. People are not satisfied with what Sinohydro

said because it is not compatible with their lifestyle. In addition, they said that since the project started, they have lost half of their income, so it is not true what Sinohydro told the public about how the project would increase income for people working for the company.

Conclusion

Based on this case study of the Kamchay Hydropower Project, the Cambodian government is willing to approve of hydropower development projects without adequate policies on environment and social protections. The Cambodian government did not follow the regulations on National Park protection and the local ecosystem will be destroyed as a result of this project. As a result of this project, local lifestyles have changed and people have lost their livelihoods. Sinohydro also bears responsibility. They promoted themselves in public without releasing information about the potential impacts of the Kamchay project to the public. This case study illustrates that Sinohydro does not place priority on human rights and the environment.

Recommendations

The Cambodian Government

The Cambodian government should conduct the feasibility study again because the information on the Experco International website and provided by the Sinohydro representative is false. The government should consult with the people about the project before signing the agreement and should release the EIAs and SIAs to the public. The Cambodian government needs to create a right to information and environmental safeguard policy, which can be used to advocate against the project if there are any concerns and problems. In the future, the government should consult with the people about the impacts of the dam and try to solve the problems for people so that they will not repeat the mistakes from Kamchay Dam in future dam projects.

Chinese Government

The Chinese government should monitor the company's environmental policy for overseas projects and encourage companies operating overseas to follow China's laws and policies, along with the foreign country's laws and policies.

Sinohydro Corporation

Sinohydro should study more about the WCD guidelines and how to apply them. The company should prepare a Livelihood Restoration Plan for affected people who harvest and collect forest products and whose income depends on natural resources. Sinohydro should consult with people about how the project changed the livelihoods and make sure that people understand and agree without being forced.

Community Members

Community members should organize themselves and collect information to put pressure on the company and government. They should network among themselves to demand their rights and defend their livelihoods and try to network with other international NGOs looking into Sinohydro's overseas operations.

Public Participation in EIA Processes

A Case Study of the Proposed Power Plant at Stung Hav, Sihanoukville

by Khiev Kanal

Khiev Kanal has worked at Legal Aid of Cambodia to ensure a justice for juvenile defendants, and as a Legal Assistant with Samreth Law Group, where he assisted lawyers in conducting field investigations, collecting evidence on human rights cases and reviewing EIA reports. He is currently pursuing a Masters degree in Southeast Asian Studies at Chulalongkorn University in Thailand.

Summary

Environmental impact assessments (EIAs) are an important tool to measure the impacts of development projects. This report shows the results of a two-month research project on public participation in EIA processes using the example of a proposed power plant at Stung Hav, Sihanoukville. In this study, I used both primary and secondary data to compare the differences between existing policies and reality. From this research, three main points are highlighted in relation to improper conduct of public participation that was caused by unclear EIA guidelines. What I found from this research was passive public participation and limited access to information, leading to the question of whether this truly qualified as public participation.

Introduction

Because developments projects in Southeast Asia often pose threats to local environments, development planning requires a cooperative process, involving participation from the government, individual citizens, developers, and civil society as a whole¹. Furthermore, public participation is one of the legal requirements in Environmental Impact Assessments².

1) Linda P. Wagenet and Max J. Pfeffer " Organizing Citizen Engagement for Democratic Environmental Planning" from http://devsoc.cals.cornell.edu/cals/devsoc/outreach/upload/Stakeholder_Engagement.pdf retrieved on October 15, 2010

2) International Financial Cooperation -OP4.01 "Environmental Assessment", October 1998 page 4

The term public participation can be found in Cambodian legal frameworks such as the Cambodia Constitution, the Law on Environmental Protection and Natural Resource Management, the Law on Electricity Management, and other regulations. However, these legal frameworks haven't clearly stated the meaning of public participation or specified the processes through which this should be achieved. This weakness in the legal framework causes negative effects to local communities, but often benefits project developers. It shows a gap between policy and implementation. In order to reduce the gap between policy and reality, certain conditions must be fulfilled³.

The Stung Hav Proposed Coal Power Plant Project

80% of Cambodia's population of 13.4 million lives in rural areas, of which only 13% have access to electricity⁴. Of the electricity used in Cambodia, 21% is imported from neighboring countries (27% from Vietnam and 73% from Thailand), 3% comes from hydropower and 76% from diesel oil/fuel oil⁵. Production of electricity will be increased to 6000 MW in 2020, 6% of which will be imported from neighboring countries, 3% from diesel oil/fuel oil, 8% from coal/gas, 15% from coal power plant and 68% from hydropower⁶. Since the production of electricity from coal-fired power plants will increase in the coming years, this report will focus on public participation in the EIA process of the Stung Hav Coal-Fired Power Plant.

Stung Hav is a district in Sihanoukville province that consists of 3 communes and 10 villages. The total population is 12,326, consisting of 2,416 families in which 315 families live in Kam Penh commune, 726 families live in Or Tres commune, and 1,375 families live in Tum Nup Ro Lork commune⁷. Stung Hav district has a smaller population than other districts. Its seaside location makes it a good site for the import and export of goods. A railway connecting Stung Hav to Phnom Penh is currently being rehabilitated with support from the ADB. In addition, a new road was built to facilitate transport of goods from this district to other places in the country. For these reasons, Stung Hav was designated as an economic zone of Sihanoukville province and chosen as the site of a proposed Coal-Fired Power Plant.

The proposed Coal-Fired Power Plant (CFPP) is the wholly owned subsidiary of the investment holding company Leader Universal Holdings Berhad from Malaysia⁸. Leader was established in 1988 as a merger between Leader Cable Industry Berhad and Universal Cable Berhad which are the two largest cable companies in Malaysia⁹. This project is being developed by Cambodian Energy Limited (CEL) as a joint venture with a company formed by Leader Cambo-

3) Associate Professor Soparata Jarusombat, Faculty of Political Science of Thammasat University " Policy Strategies on Public Participation in Environmental Management in Thailand", 1st ASEM International Conference on Public Participation 10-12 June 2002, Bangkok from http://www.aetec.org/int_output.htm retrieved on September 25, 2010

4) Population Census 2008 of Sihanoukville Province

5) Data from Ministry of Industry, Mine and Energy 2008

6) Energy Situation of Cambodia by Mr. Tek Vannara, Communication and Research Officer at Natural and Cultural Preservation Association at the 5th annual conference on 20-21 October 2010

7) Population Census 2008 of Sihanoukville Province

8) General Announcement number LU-090615-55913 on 16/06/2009 http://www.leaderuniversal.com/about_leader/profile.asp retrieve on 17.07.2010

9) http://www.leaderuniversal.com/about_leader/profile.asp retrieve on 20.09.10

dia and Cambodia International Investment Development Group Company Limited (CIIDG). This joint venture was announced in June 2009¹⁰.

Under the terms of agreement, CEL will build, own and operate the power plant. The power that is generated from this project will be sold to Electricite Du Cambodge (EDC) at a concessional rate for 30 years. The cost of this project is \$140 to \$170 million.

This project will be built on 20.5 hectares of land at village number 2, Kam Penh commune, Stung Hav district, Sihanoukville province. The factory will be built about 700 meters from a beach. This project will operate with two units with a generating capacity of 50-52MW per unit. The total generating capacity from this project is 100-104MW. The coal that will be used for this project will be delivered from Indonesia and Vietnam¹¹.

Potential Benefits of the Project

People who were interviewed showed interest in the project because they believe it will reduce the electricity price in this district. Before, a private company provided electricity at a cost of 3000 Riel/KW. Currently, electricity is transferred from Sihanoukville to Stung Hav and costs 1500 Riel/KW. Several villagers said, "I think the electricity fee will be reduced if this factory is built."

With this electricity, people will be able to use electric devices to make their lives easier. One high school teacher said, "Presently, I want to listen to the news on TV but I can only watch it at night since electricity is so expensive." Since this is the first such project in Stung Hav, one high school principal said, "It would be good to conduct a study tour of the project for my students so they can understand how electricity is generated from a coal power plant."

Villagers also hope that this project will provide new jobs for local people in this district. A primary-school principal said, "Even though local people may not qualify to be technical staff, they can be workers in the factory. This can help to reduce poverty as well as increase the standard of living of people in this district."

A representative from the EIA consulting company explained the benefits of the project to the local people, yet one secondary-school principal raised a question: "The Kamchay hydropower plant is already built, and the electricity from this dam can support Stung Hav district, so why we need to build a coal-fired power plant?"

Since this is the first proposed coal-fired power plant in Cambodia, it is important to understand the impacts of this project on local people, especially villagers in Stung Hav district, 90% of whom make their living from fishing.

Policy vs. Reality

Based on my fieldwork, three main points were found related to public participation. These

10) Work on Cambodia's New 100 MW Coal-Based Power Plant <http://www.pump-zone.com/global-news/global-news/work-on-cambodias-news-100MW-coal-based-power-plant-begins.html> retrieve on 16.09.10

11) S'ville coal-fired power plant fuels concerns for health, environment: Phnom Penh Post, May 16-29, 2008 Vol. 17 Number 10 "The secretary of state for the Ministry of Industry, Mines and Energy, Mr. Ith Prang said the plant will use coal from Vietnam and Indonesia."

points are discussed in detail below through a comparison of relevant Cambodian law and the reality of the current situation.

Passive Public Participation

Policy

The Cambodian Constitution of 1999

Article 35 states that, “Khmer citizens of either sex shall have the right to participate actively in the political, economic, social and cultural life of the nation. Any suggestions from the people shall be given full consideration by the grant of the state.”

Sub-decree on Environmental Impact Assessment 1999

Article 1 states that the EIA process should “encourage public participation in the implementation of the EIA process and take into account their input and suggestions in the process of project approval.”

Reality

Public consultations for this project were conducted three times. The participants were selected to join this consultation. Participants varied from one meeting to another.

The villagers who were invited to join this meeting were not able to actively share their concerns. People who were actively involved in the meetings were the head of the fishery community, NGO staff and a few local people. Most of time, those participants who could read and write were asked to answer questionnaires. For those who are illiterate, interviews were used to collect information.

Since selected participants always changed from one meeting to another, some participants never heard answers to their questions.

“The average monthly income for a fisherman is between 3 to 4 million riel. This amount has already decreased from before. Will this project keep decreasing my income?”

- A fisherman at Village Number 2, Kampenh Commune

Since this fisherman only joined one meeting, he never heard an answer to the concerns he expressed.

Limited Access to Information

Policy

Law on Environmental Protection and Natural Resource Management 1996

Article 16 states that, “The Ministry of Environment shall, following proposals of the public, provide information on its activities, and shall encourage participation of the public in the

environmental protection and natural resource management.”

Article 17 states that, “Procedure for participation of the public and access to information pertaining to the environmental protection and management of the natural resources, shall be determined by a Sub-decree following a proposal of the Ministry of Environment.”

There is no clear definition of public participation or clear guidelines for the process of public participation. However, public consultations must be organized at least two times for a project¹².

Reality

Based on interviews with local people, I found that most of them didn't have clear information about the project, its impacts, or when the project will begin.

Three public consultations were conducted concerning the coal-fired power plant project. Public consultation consists of three stages: before, during, and after the consultation.

Before the consultation: Before a public consultation is held, the project owner or company who is in charge in the project must inform people so that they may join the public consultation. There are several means to disseminate information, such as by radio, letters, leaflets, and announcements by local authorities¹³. For this project, leaflets issued by the EIA team were distributed to the local people. Some villagers also learned about the public consultation from the head of the commune.

“I saw there were meetings at the district hall. I really wanted to join but they didn't invite me, so how could I join the meeting?”

- Principal of the local primary school

During the consultation: In this stage, the opinions of local people are the most important since they often know the environment of their home better than others. This expression of opinion should be free from any intimidation. What is more, local people must have access to information about the project, such as the owner of the project, where the company is from, and what the project is about.

However, people were not able to share many of their opinions because of their level of education as well as lack of understanding of the project. Some villagers told me, “We were given a list of questions to answer. Also, we were interviewed about possible impacts that could happen.” Villagers who were interviewed do not know much information about the project; they only knew that the company is owned by a powerful business woman.

After the consultation: After the public consultation, people should be informed about the results of the previous consultation in which they participated. During this stage, people have the right to share their opinions or give suggestions.

Based on my interviews, people who were invited to participate in the three public

12) Assessment: International Finance Corporation OP4.01, October 1998 page 4.

13) From the interview with environmental scientist from Team Consulting and Management of Cambodia on 11.10.2010

consultations were different at each meeting; i.e. no one person was able to participate in all three consultations. Some people said that they were invited to join a public participation one time. The fishery community had met with the EIA team two times because the team arranged a particular meeting for this group.

Many villagers who joined the public consultation never found out the results of each meeting. One villager at Chamka Mrech village said that the EIA team only explained the benefits of the project. The EIA team officials also claimed they would use modern technology to mitigate any negative impacts from the project.

True Public Participation?

Policy

Guidelines for Preparing a Report of an EIA 2009

Annex 1: “Public Participation refers to the discussion between relevant parties such as relevant Ministry/Institution, local authority, relevant departments, company’s owner, project’s owner, consultants, representatives of affected people, and NGOs on the development project.”

Reality

From this research, it was found that the meetings were conducted in the form of a survey rather than a discussion. Participants from the state department attended the meeting just to be seen but they never shared any comments or participated in discussions. The local authorities were interviewed separately from villagers.

Local Response

Based on my interviews with local people who are ordinary villagers and members of a fishery community, I heard different opinions about the project.

Local people who are ordinary villagers did not give any comments or ideas about whether they wanted the project or not. Some villagers said, “I do not have any idea about the coal-fired power plant since I have never seen one before.”

In contrast, one member of a fishery community showed strong disagreement with the project. He said, “this project should be stopped because it is not a healthy project for people in this community.” In the past, this fisherman had joined a study tour to the Map Ta Phut Industrial Estate in Rayong, Thailand that was organized by TERRA, a civil society organization based in Bangkok. From this field trip, people became aware of the seropis impacts to the local community’s health and people’s livelihoods. However, those who joined the study tour did not share what they learned with their community. So people who did not join the trip are still not able to picture the impacts of the project. This problem came from internal management since all members were busy with their own business.

Conclusion and Recommendations

This project will be the first coal-fired power plant project in Cambodia. Potential impacts from the project are not limited to Stung Hav district, but affect the entire Sihanoukville province. The project will produce negative impacts to humans in terms of health, and economic security, as well as degradation of the environment.

Furthermore, public access to information is limited, which violates existing regulations, as well as people's basic right to access to information. People did not know who to ask when they had a question about the project. In fact, when people expressed concern and asked questions about the project, answers were never provided. This demonstrates that the local people do not have an adequate voice in the matter, even though they know the environment of their home better than outsiders.

Last but not least, the fishery community in this area is not strong enough. There are big issues concerning solidarity, as well as organization. The people within the community who have attended study tours or workshops did not share the information about their experiences with other members of the community. This is a weak point of the community that needs to be improved.

To improve the situation, some recommendations are suggested as follows:

For Government

- » Promote alternative energy since this district is located in a coastal area. Wind is adequate all year-round, so wind energy would be a good option instead of a coal-fired power plant.
- » Disclose information related to the project to the public so people will know where to go when they need information.
- » Organize public consultations for local people, rather than for authorities, so that people are free to join these important meetings. Since they are the owners of their land, they have to know what will happen to their place and share their experiences, concerns and suggestions.
- » Allow civil society to be involved in the decision-making process of development projects so that they can share their opinions. This involvement is necessary to make sure there are checks and balances as well as transparency in the decision-making process.
- » Strengthen legal frameworks for EIAs, in particular public participation. What is more, frameworks should be clear enough for project implementer to properly follow the guidelines.
- » Set up an independent monitor to oversee the process of the project, and whether the policies have been followed correctly or not.

For Civil Society

- » Pressure policy makers to make policies more clear so they will be good guidelines for project owners, and useful for civil society to monitor projects.

- » Cooperate with the Ministry of Environment (MoE), particularly the EIA department to provide comments on the EIA reports in order to ensure that all the information is accurate.
- » Build up networks so there are enough qualified human resources to work on EIA reports. Moreover, this network will be a good link to update and share information about other development projects.

For Local People

- » Make efforts to actively participate in public consultations to express ideas and concerns about the project, share experiences, and give insights on local livelihoods in order to influence decision makers.
- » Organize local communities and select regular representative to strengthen their communities and challenge the project.
- » Share information among community members, such as what they have learned from study tours and updates on the project so that the community can prepare in advance their strategy to be more involved in decision-making around the project.
- » Seek possible ways to access information. For example, people can seek assistance from local NGOs so that they will always be alert about what is going on with the project.

Community Involvement in the Decision-Making Process of an ADB Funded Railway Rehabilitation Project

by Leng Sarorn

Mr. Leng Sarorn is an Information, Education and Communication Program Officer with Save Cambodia's Wildlife (SCW) in Phnom Penh, which he produces research, video documentation, and publications related to resource conservation and biodiversity preservation. He also has experience working with Fisheries Action Coalition Team (FACT) on advocacy around fisheries and environmental issues.

Executive Summary

This report is about the reconstruction of the existing railway in Preah Sihanouk province in southern Cambodia, which is part of the overall rehabilitation of the railway system in Cambodia, funded by the Asian Development Bank's special loan concession. The project is part of the GMS program, which aims to promote economic growth and reduce poverty through infrastructure development. The paper specifically explores points of the project's implementation that violate the ADB's policy on involuntary resettlement and also violates the Royal Government of Cambodia's regulations and legal frameworks.

This research has found that the railway project will negatively affect the communities living inside the railway station and along the railway tracks. While most villagers have been living on the government land for half of their lives, they do not have the legal right to occupy the land and cannot apply for a land certificate. Affected communities will lose their current livelihood and land as a result of resettlement by the project because this project has not fully informed and involved affected people in the decision-making process. The lack of access to information and participation for the affected people about upgrading the existing railway track will cause trouble for the affected people because they do not know about the new relocation area and they are unclear about the possibility of receiving compensation. Additionally, most of the affected people do not know where to go. If the people do not agree to move away from their current residences,

human rights violations will occur when the affected people are forcibly evicted. Also, the Cambodian government did not disclose information about the project, although the ADB requires the Cambodian government to comply with ADB's principles and Cambodian national regulations and laws; this shows the project has violated the loan agreement and the ADB's principles.

Introduction

This report focuses on the rehabilitation of the railway station and railway tracks in Cambodia, which was funded by the Asian Development Bank (ADB). The Cambodian government has signed a loan agreement with the Asian Development Bank to restructure the existing railway tracks in the whole country in order to contribute to increased economic growth and poverty reduction by providing better infrastructure.

This report investigates the project's implementation in order to determine whether the process was in compliance with the ADB's Policy on involuntary resettlement and the Cambodian government's regulations and laws. It describes the efforts of local communities in the railway station and along the railway tracks to participate in the decision-making process and exercise their right to access information concerning the ADB's resettlement policy in Cambodia.

As a result of the lack of access to information and lack of awareness about the project, the local villagers inside the railway station and along the railway tracks will have their livelihood and housing affected. The villagers might lose their land as a result of resettlement by the project. The villagers will be negatively affected by the project; particularly, the compensation will likely not be enough to cover the cost of losses suffered during and after resettlement. The majority of affected people will lose their main sources of income and their living conditions will be impoverished. The project will create negative social impacts.

As previous experience shows, there has been controversy with other ADB projects in Cambodia, such as the case of Highway One which had many problems with resettlement and compensation. The project did not comply with the ADB policy on involuntary resettlement and the terms of the loan agreement. People's livelihoods were flung into severe poverty. The affected people were not fully informed or given the right to participate in decision making about resettlement options. So, in the Highway One project, the ADB made a large mistake by failing to monitor the implementation of resettlement and compensation.

Goal of the Report

This report aims to support efforts by communities and civil society to hold the ADB and the government of Cambodia accountable for following ADB safeguard policies for the railway project. The report supports this overall goal by focusing on a case study that achieves three specific objectives:

1. Understand and document the involvement of effected communities in the decision-making process of the railway project
2. Identify and briefly document compliance of the railway project with the ADB's Involun-

tary Resettlement safeguards

3. Provide recommendations to assist civil society groups and communities to raise concerns and solve problems associated with the project.

Background Information

Cambodia's railway is a strategic element of the Greater Mekong Sub-region (GMS) transport sector strategy's southern corridor, which connects Cambodia, Thailand, and Vietnam. On 05 March 2007, the government of Cambodia and the ADB signed the agreement on Special Funds on the "Rehabilitation of the Railway in Cambodia project". The loan was approved by the ADB to the government of Cambodia to rehabilitate the existing damaged railway. This project was conducted by the Ministry of Public Work and Transport (MPWT). The railway offers an alternative way for people to travel and mitigate the occurrence of traffic accidents. The project started in 2006 and was completed in December 2009.

This research project was conducted at two communes in Sihanoukville, where people have been affected by the railway project. Sihanoukville, historically known as Krong Kampong Saom, is located 234 km southwest of the Phnom Penh capital, along the Gulf of Thailand. Sihanoukville plays a critical role for improving economic growth and is a premier beach resort to attract tourists. The city has attracted not only tourists, but several NGOs and foreign and national investors in the recent years in order to develop not only the growing tourism industry, but also its capacity as an international sea port. To reach this city, people use the National Road #4 or the poor railway which links from Phnom Penh capital. Because of the poor condition of the railway, people usually go to Sihanoukville by using the #4 Highway¹.

Key Findings

This section analyses the extent to which affected communities have been able to participate in decision making processes, and also analyses compliance of the Railway project with ADB Safeguards on Involuntary Resettlement.

Public Participation

ADB policy

The ADB public communications policy aims to enhance stakeholders' trust in and ability to engage with the ADB. The policy promotes a two-way flow of information between ADB and its stakeholders, including affected people². This ADB policy supports the rights of people to seek, receive, and impart information and ideas about ADB-assisted activities. The ADB vows to provide information in a timely, clear, and relevant manner so it can communicate with, listen to, and consider feedback from its stakeholders. The ADB aims to share information with

1) ADB, 2006. Report and Recommendation of the President of the Board of Directors

2) ADB, 2005. The public communication policy

affected people early enough for them to provide meaningful inputs in the project design and implementation.

The Reality of how the ADB Policy has Been Implemented in the Railway Project

Based on a survey in which I interviewed 36 individuals in the project area, about 68% of the affected people did not receive any information about the railway rehabilitation project, while 32% of respondents heard rumored information from other people about the railway expansion. Those who received information got it from a survey team that came to make a measurement survey of the houses that were affected by the project. During my investigation, red markers were found placed on the outside walls of houses to notify residents about the plans to expand the road 3.5 meters wider on both sides of the railway tracks. It was unclear to the affected people who the survey team represented, whether they were government officials, ADB representatives, private company representatives or NGO workers.

As the interviews with affected community members indicate, the project staff did not fully consult with the community on the impacts of the project. None of the community members interviewed participated in the decision-making process, even though the villagers should have been given the right to discuss the project design with the government, company or relevant stakeholders because the villagers were directly impacted by the project. Furthermore, neither the affected people nor the local village chiefs and authorities interviewed had information concerning the project. Most of the project planning came from the national government.

Compliance with Involuntary Resettlement Policy

According to the loan agreement between the Cambodian government and the ADB in March of 2007, the government must apply the principles of ADB policy and Cambodian regulations and legal frameworks to the project. In the event that ADB policies and Cambodian policies are in disagreement, ADB Policy would always take precedence.

The results of the survey revealed that the project did not fully comply with the requirements of ADB policies on involuntary resettlement and the environment. This section will report the key points which did not comply with the principles of ADB and will examine the points that violated government regulations and legal frameworks.

ADB Policy on Involuntary Resettlement

The ADB policy on Involuntary Resettlement was adopted in 1995 and is applicable to all ADB-funded projects. The key provisions of this policy are listed below, followed by a discussion of the reality of the policies as implemented by the railway project.

ADB Policy: Resettlement Plan (RP) must be developed in consultation with AP (Affected Populations) and AP should be fully informed

Reality: Lack of access to information and public participation

Affected communities were not fully informed or made aware of the project, especially information on the resettlement process in the project. Furthermore, the information on resettlement was not given by the project officials to affected persons either inside the railway station or on

either side of the railway tracks.

The quotations below show villagers' own experiences with access to information and public participation in the decision-making process. Most villagers living inside the railway station and on both sides of the railway tracks in the affected area received unclear or limited information about the project, and raised a variety of concerns for their livelihoods and futures. Although the project enhances the national economy and provides benefits for some of the local villagers, the villagers felt worried and expressed various concerns.

ADB policy: Project-Affected People must be compensated

Reality: There was a lack of access to information, a lack of awareness about the project and the affected people were not given the right to participate in the decision-making process of the project preparation, especially the resettlement and compensation options. There are different perspectives among the affected people about compensation. Some households will be compensated, but they are not sure they will get enough compensation and some households are unclear about receiving any compensation because most villagers were living on government administrative land and did not have the legal right to occupy the land.

ADB policy: Absence of legal land title should not be a barrier to receiving compensation

Reality: The people in the railway station and along the railway tracks have lived on government administrative land for half of their lives following the collapse of the Pol Pot regime in 1979³. They don't have legal right to occupy the land⁴. There are 2 types of landlessness: (1) No recognition from the local authorities and (2) Chong San Lek— Recognition from the local authorities. Although the affected population has lived within those areas for almost half of their lives, they are worried about whether they can receive compensation because the government never invited them to participate in discussions about compensation. The government did not issue any declaration about compensation. The affected people should have received land compensation under the ADB involuntary resettlement policy.

The affected people inside the railway station have submitted letters with their thumbprints to ask permission from the government agencies to allow some parts of land within the

railway to remain occupied, but until now there has been no response from the government agencies.

Because the people have lived on government land for a long time, they have different perspectives about land compensation. Because the affected villagers living inside the station and along the railway tracks have little expectation of receiving compensation, they may not receive any land compensation. Some people stated that they should get land for land compensation because they have lived in the area for a long time and the local authorities recognize them as legal residents.

ADB policy: Affected people must be at least as well off economically and socially after the

3) During the Pol Pot regime, people did not have the right to own property so they could live anywhere in the whole country to make their living.

4) Land Law 2001 Article 43, states that public property cannot be legally possessed no matter when the occupier first came to live on the land.

project as they were prior to the project

Reality: As the results of interviews showed, for many years, people living in the vicinity of both the railway station and along the railway tracks made their living through low income occupations. The main source of economic activity comprised of selling labor (shrimp and crab peeling, factory workers, construction, harbor and train work), working as government officials (police, station officers and council of municipality), fishing, fish buyers, street vending, and motorcycle taxi drivers. Their incomes ranged from 2000 to 20000 riel (US \$0.50-\$5.00) per day.

The affected people raised the concern that their current livelihoods will be lost if the government moves them away from their current residences. People's livelihoods will be negatively affected by the project. They will lose their occupations; many sources of income may decline as the result of resettlement. Most of the respondents stated that the government and the ADB have not discussed with affected community members about restoring their livelihoods.

Other Concerns

The ADB's publication Report and the Recommendations of the President says, "the Ministry of Public Works and Transport (MPWT) will be responsible for disclosing the draft and final resettlement plans to the affected persons"⁵

Reality: Most affected people were not invited to participate in discussions about the resettlement plan and did not receive any information about the resettlement plan. The affected people should be given the right to access to this information and should be involved in the resettlement process. The MPWT did not disclose the information.

The same document says "ADB's Accountability Mechanism (2003) has been translated into Khmer and will be distributed to affected persons together with the public information booklet."

Reality: Most affected people did not receive any booklet concerning the project. This shows that the government agencies did not adequately distribute the booklet to the affected people. They did not follow the ADB's Accountability Mechanism.

The same document says "The government will set up a web site, including a list of participating bidders."

Reality: It is unclear whether the government set up a website or not. Additionally, local people lack computer access, so they cannot access the internet.

Conclusions And Recommendations

Conclusion

The lack of access to information and participation around the railway rehabilitation project has created serious concerns for affected community members. Additionally, the government did not give affected people the right to participate in the resettlement process, nor did the

5) RRP, 2006

Cambodian government disclose information about the project, although the ADB required the Cambodian government to comply with the ADB's principles and Cambodian national regulations and law.

- » The poor compliance of the railway rehabilitation project with ADB Safeguard policies can be summarized from this research project as follows:
- » The ADB's policy on involuntary resettlement states that the Resettlement Plan (RP) must be developed in consultation with Affected Peoples and they should be fully informed; however, in reality the AP lacked access to information and public participation because they were not fully informed or aware about the project.
- » According to the Report of Recommendations of the President of the Board of Director, the ADB's agreement with Cambodia states that Cambodia's Ministry of Public Works and Transport (MPWT) will be responsible for disclosing the draft and final resettlement plans to the affected persons, but the affected people have yet to receive any information about the resettlement plans.
- » The ADB's policy states that Project-Affected People must be compensated, but in reality the affected people are unclear about whether they could receive compensation or not because the Cambodian government did not give the affected people the right to participate in discussions about resettlement options.
- » The ADB's policy also says that the absence of legal land title should not be a barrier to receiving compensation, but AP are not clear about the compensation and they don't understand the process of receiving land title because they are living on government land and are currently denied land titles.
- » The ADB's policy states that AP must be at least as well off economically and socially after the project as they were prior to the project, but in reality people's livelihoods will be negatively affected by the project because they will lose their occupations; many sources of income may decline as a result of resettlement, and most respondents stated that the government and the ADB have not discussed livelihood options with communities.
- » To date, although the ADB's Accountability Mechanism (2003) has been translated into Khmer, it has not been widely distributed and the affected people at the Sihanoukville train station have not received it.

The ADB's policy on involuntary resettlement is very important and is applicable for all ADB-funded projects in order to avoid involuntary resettlement where possible. In this case, the ADB failed to monitor the project operation and whether the Cambodian government respected the loan agreement and the ADB's policy. The ADB is complicit in the Cambodian government's violations of ADB policies by failing to ensure that they are properly implemented.

Recommendations

The Cambodian government should follow their responsibilities under the loan agreement, follow ADB safeguard policies, and follow national policy by:

- » Disclosing information about project and giving affected people the right to be involved in decision-making processes on resettlement options.
- » Ensure documents are translated into the Khmer language and posted in affected areas and commune offices.
- » Ensure people's security by improving infrastructure and fair compensation before moving people to a relocation site.
- » Ensure communities are aware of their rights under accountability mechanisms to file complaints about the project.
- » Provide vocational training for those relocated in compliance with ADB policy to ensure that livelihoods are as good or better than before.

The ADB should:

- » Ensure that implementation by the government is consistent the ADB safeguard policy.
- » Collaborate with NGOs to clearly document the impacts of project activities on affected people as a basis for addressing these problems.
- » Ensure all information is disclosed to all relevant stakeholders, especially affected people.

NGOs should:

- » Collaborate with each other to share information, strategize, and include affected people, providing them opportunities to express their needs and concerns.
- » Work closely with affected people and publish and disseminate a booklet in Khmer language about the project and peoples' rights under the project.
- » Provide information and trainings to APs on their right to fair development, resettlement and compensation.
- » Support APs in research and documentation, and in submitting complaints to the ADB and the government.

References

- ADB. 2006. Technical Assistance for the Transport Sector Strategy Study
- ADB, 2006. Report and Recommendation of the President to the Board of Directors

- http://www.cambodiainvestment.gov.kh/?q=ii_infra
- ADB, 2007, Cambodia: GMS Rehabilitation of the Railway in Cambodia Project, resettlement planning document
- ADB, 2005, Proposed Technical Assistance to the Kingdom of Cambodia for the Restructuring of the Railway in Cambodia (Financed by the Government of France)
- ADB, Resettlement Plan Document, GMS Rehabilitation of the Railway in Cambodia Project
- Royal Embassy of Cambodia in Washington D.C, 2008 and <http://www.embassyofcambodia.org/infobulletin.htm> , information bulletin.
- ADB, Loan agreement between ADB and the Royal Government of Cambodian, 05 March 2007
- ADB, 2005. Public Communication policy
- Mekong watch bulletin, 2005. Challenging for implementing ADB resettlement policy in Cambodia
- NGO Forum on ADB, 20., Unpacking the ADB, a guide to understanding the Asian Development Bank

Apendices

Additional Background Information about the Railway project

The project is divided into three components, thus: (i) the 338 km Northern Line that runs from Phnom Penh to Sisophon in Banteay Meanchey; (ii) the 264 km Southern Line that runs from Phnom Penh to Sihanoukville; and (iii) the 48 km so-called ‘missing link’ that runs from Sisophon to Poipet. The railway tracks of this “missing link” disappeared during the civil war in the 1970s.

There are four separate nationwide projects which are: Part A: Rehabilitate the Southern Line from Phnom Penh to Sihanoukville (approximately 254 km). Part B: Rehabilitate the Northern Line from Phnom Penh to Sisophon (approximately 340 km). Part C: Reconstruct the destroy rail link from Sisophon to Poipet (48 km). Part D: Mitigate the adverse impact of restructuring.

An estimated investment cost in the amount USD 73 million (seventy three million) of project “Greater Mekong Subregion: Rehabilitation of the Railway in Cambodia project”. With a loan concession of US\$42 million equivalent 75% of total cost from ADB’s Special Funds resource was approved. USD 13 (Thirteen) million will be provided by OPEC Fund for International Development (OFID). OFID and ADB will jointly finance the civil works component of the project. The Government of Malaysia will provide a grant in kind of reclaimed rail valued at about US\$2.8 million equivalent and the Government will finance US\$15.2 million, comprising all

costs of Project administration, taxes, clearance of unexploded ordnance, compensation of railway staff in connection with restructuring, and resettlement and land acquisition, but not the cost of associated consultants, which will be financed by ADB. The Borrower will be the Kingdom of Cambodia⁶.

Company Involvement

On January 11, 2008, an agreement on the railroad construction was signed by Public Works and Transport Minister Sun Chanthol, Ministry of Public Work and Transport, Government of Cambodia with the TSO company's representative. Three companies, TSO Company of France, AS company and NAWARAT Company of Thailand have collaborated in the joint venture of building railway tracks in Cambodia.

⁶) ADB.2006. *Proposed Loan and Administration of Loan Kingdom of Cambodia: Greater Mekong Subregion: Rehabilitation of the Railway in Cambodia Project*

Negative Impacts of the Buon Kuop Dam and the Application of the Clean Development Mechanism

by Tran Minh Tai

Mr. Tran Minh Tai is a Forestry Auditor for Control Union Vietnam's inspection and certification program. He also has experience with WWF Greater Mekong, where he worked with communities to develop co-management of forests in Central Vietnam.

Summary

This paper analyzes the negative social, health, and environmental impacts of the Buon Kuop hydropower dam project on a community living along the Srepok River in the Central Highlands of Vietnam before the operation phase up to now. In this paper, the author seeks to understand the main impacts of the project on local livelihoods. Additionally, the report explores the local people's awareness and opinions of the project. Finally, the report also describes the application of the Clean Development Mechanism (CDM) status from this project and the violations of the objective of the Kyoto Protocol according to the United Nation Framework Convention on Climate Change (UNFCCC) in Project Design Document (PDD).

Secondly, the researcher submits recommendations to help local people get urgently needed compensation as well as to convey this message to the dam builder, the government and funders in order to ensure justice for affected people and the right to participate in decision making.

The author hopes that this research will contribute to advocacy directed towards the project funders in cooperation with 3S Rivers Network.

Background

This research was conducted in Buon Dzai and Eatung villages, in Eana Commune of Daklak Province. Daklak province is in the Central Highlands of Vietnam and is part of the economic development in the central - south zone of Vietnam. Daklak is a watershed area with plentiful

natural resources. In the national development strategy and development plan, Daklak is the focus of both internal and external investments, including hydropower projects.



The Buon Kuop Dam is built on the Srepok River, a tributary of the Mekong River and one of the 3S Rivers (Sesan, Sekong, and Srepok) in the Central Highlands of Vietnam. Buon Kuop is one of six dams that Vietnam's national power utility, Electricity of Vietnam Corporation, built on the upper Srepok to supply the country's southern power network. Four dams are currently under construction: Buon Kuop (280 MW), Ban Tou Srah (86MW), Srepok 3 (220 MW) and Drayl Linh New (28 MW). Another two are at the feasibility study stage: Srepok 4 (70MW), and Duc Xuyen (49MW).

The project began partial operation on September 28th, 2009. During this time, the developers of the project began the process of applying for carbon credits from the Clean Development Mechanism (CDM). On June 1, 2009, its Project Design Document (PDD) for public comment on the UNFCCC (United Nations Framework Convention on Climate Change) was submitted. It is currently up for validation by ERM Certification and Verification Services Ltd, a certified CDM validator. Its credit buyer, should it be approved by the CDM Executive Board, would be JP Morgan (UK)

The project is located in three communes of three districts: Eana commune, Krong Ana district, Daklak province, Nam Da commune, Krong No district and Hoa Phu commune, Cu Jut district, in Dak Nong province. These are three highland districts where many ethnic people live.

The majority of impacts of the Buon Kuop hydropower project are concentrated in two

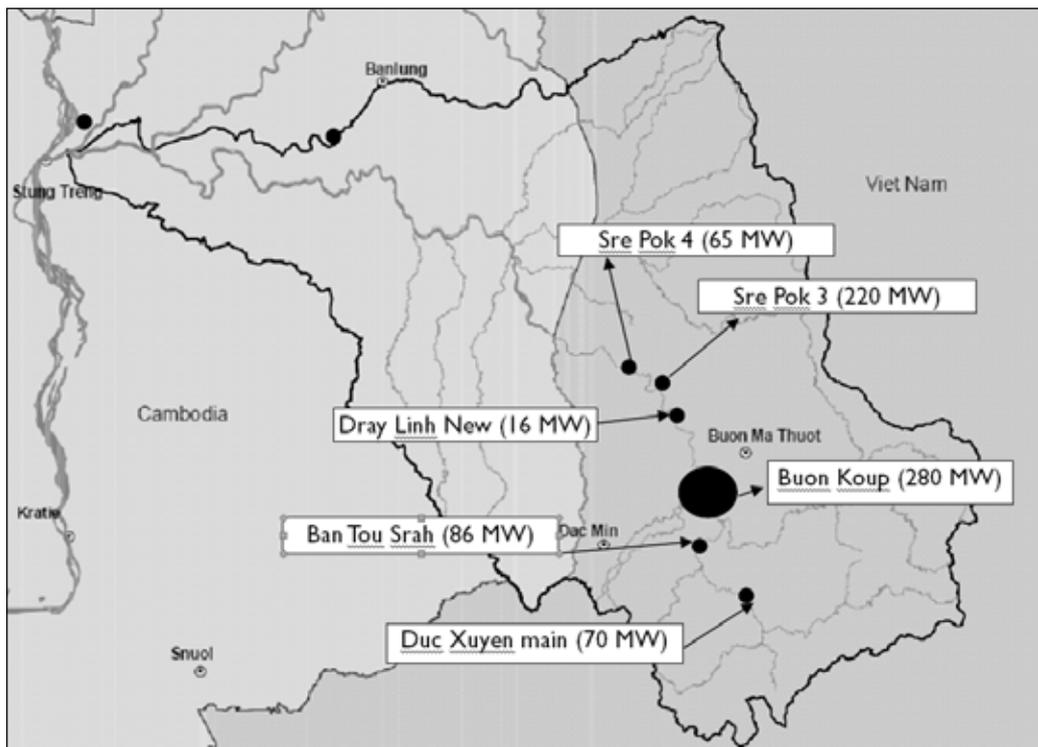
districts: Krong Ana and Krong No. The ethnic background of residents in these two districts is diverse, with around 20 ethnic minorities. The Mnong and Ede make up 80% of the population of ethnic minorities (not including the Kinh, who comprise the ethnic majority in Vietnam). Agriculture and forestry workers make up the largest part of the working population. An estimated 3,006 people, or 583 households affected by the Buon Kuop hydropower project received a combination of resettlement assistance, replacement land and cash compensation for damaged crops and assets.

The project consists of a dam, a reservoir, and a 280 MW hydropower plant, funded by SIDA, NORAD, ABN Bank, & the Vietnam Agriculture Bank with a total project cost estimated at 4.612 billion VND. The dam is built across the Srepok River, creating a reservoir with a storage capacity of 10 million cubic meters. The project started in 2002 and was completed in 2009.

Negative impacts of the Buon Kuop hydropower project

Affected Communities

Eana commune is the main community impacted by the Buon Kuop hydropower project. Eana commune has ten villages, with two villages that have been uprooted and resettled, Buon Dzai and Eatung villages. This report focuses on Buon Dzai and Eatung villages in Eana commune.



Boun Kouop hydropower project site

Local people make their living from wet rice cultivation, highland crops, raising cattle, pigs and chicken, planting coffee, and fishing, as well as by doing some work for the Krong Ana state coffee farm.

The main negative impact from the Buon Kuop project is related to the occupation of land, as the project occupies about 900 hectares of mostly forest and agricultural land. The surrounding area is made up of poor quality forests with a small area dedicated to agriculture.

Environmental Problems

Water and Health

The project created a reservoir with an area of 557 hectares. The dam blocked the river's flow of water and polluted the spillway. Waste and hazardous material generated by residents living along the river causes environmental pollution because the river cannot flow as it used to. This has also reduced the area's biodiversity and the quality and quantity of aquatic species.

The local people depend on the river water for drinking, bathing and washing, irrigating food crops and providing water for domestic animals. People and animals in the community who drink and utilize the contaminated water are exposed to both short-term and long-term health problems and to the risk of acute poisoning. They face health problems such as itchy eyes, itchy skin, stomachaches, cholera, malaria, and scabies. Now the community has to buy clean water to use for daily life.

Land Use Changes and Biodiversity

Because the community has lost its land to the reservoir and the dam, many people lack land for cultivation. Some of them have to move to other provinces to buy new land for crops and for building a new house, while others have moved to the city to look for jobs.

The main impacts on flora and fauna include: displaced vegetation at the construction sites and along the access roads, illegal fuel-wood and non timber forest product collection, wildlife hunting during the construction phase, and disturbed habitat of terrestrial animals immediately adjacent to the project site.

Plants and Crops

On their farmland, the villagers mainly grow coffee plants. They also grow some other kinds of crops including wet rice, upland rice, peppers, rubber trees, and fruit trees. Besides the 900 hectares of mostly forest and agricultural land that the community occupied, more than 50 households lost their crops in the dam's operation phase. The two villages wrote a letter to the dam builder and the local government, but the situation has not been solved. The village leader explained, "We were faced with a large flooded area, and we have been losing large areas of cultivation land and some houses from 2009 up to now."

Animals and Fish

Fish is the daily food and main source of income for people living along the Srepok River. The impacts from the hydropower plant operation on fish are destructive to both the people's economy

and their quality of life (nutrition), and consequently are harmful to their culture. A local fisherman said, “The volume of fish has declined in recent times. We used to make 150.000 VND (US \$7.5) per day before, but now we get below 80.000 VND (US \$4). So we don’t have enough money for daily life due to the polluted water and the rising water level”.

Compensation

Under the project, 154 households were allocated new agriculture land, 48 households were resettled during the construction phase, and 50 households were flooded when the operational phase began.

There is currently no clear information regarding the compensation plan for the community in the operation phase of the EIA documents. In 2009, 50 households in Eatung and Buon Dzai villages submitted a letter to the Hydropower Project Management Unit No. 5 in Krong Ana District. In the letter, the people demanded compensation for damage to their houses and crops. However, the communities have not yet received an answer from the project managers.

The project has impacted all the farmland and housing in this community. There are many problems with the compensation and resettlement plan. This has led to conflicts between the local people, the local government and the project management board around unfair compensation and 21 households’ loss of land to the reservoir. These have been the main complaints from the local community over the past seven years of the dam’s construction.

“We are not intelligent enough to understand what happened in this project. Compensation should ensure us new living conditions. We don’t require high benefits, but we don’t have enough money to buying new land and houses because the real price of land is higher than our compensation.”

- A villager

Clean Development Mechanism (CDM) Approval Criteria

The Clean Development Mechanism (CDM) is one of the three flexibility mechanisms of the Kyoto Protocol to the United Nation Framework Convention on Climate Change (UNFCCC). The goal of the UNFCCC and the Kyoto Protocol is to reduce the emission of greenhouse gases into the atmosphere in order to mitigate human-introduced climate change. The CDM was created to promote the construction of greenhouse gas reduction projects in developing countries that are party to the Kyoto Protocol. The projects are made possible by finances provided by developed countries that are party to the Protocol.

The detailed rules of the CDM were agreed upon by Kyoto Protocol parties in 2001, as part of the so-called Marrakesh Accords. In that same year, the CDM Executive Board was formed and began building the structure and process of the International CDM system. The first CDM was officially registered in 2004, and since then the number of CDM projects has continued to grow

steadily.

The Kyoto Protocol's Function is described in the UNFCCC's background publication, *Caring for Climate as supplementing and strengthening the UNFCCC, providing a framework for remedial and precautionary action to tackle adverse effects of climate change.*

Hydropower is the second most common type of project proposed to receive carbon credits under the Kyoto Protocol's Clean Development Mechanism. The Buon Kuop hydropower dam project in Daklak province began the process to apply for carbon credits from the CDM in September of 2009.

The European Union's "Linking Directive" requires hydropower projects above 20KW capacity to respect the World Commission on Dam's "criteria and guidelines" if they are to generate CDM credits to be used in Europe's carbon trading system. Therefore, the 280 MW Buon Kuop Dam project should be implemented in alignment with the World Commission on Dam and Clean Development Mechanism criteria.

Vietnam fulfills all the requirements to be a CDM host country. It signed and ratified the UNFCCC in 1994, signed the Kyoto Protocol in 1997, and ratified it on August 20, 2002. The Vietnam government is highly interested in the climate change issue. It considers global warming due to anthropogenic greenhouse gases to be a real threat, and understands that Vietnam is one of the most vulnerable countries. By participating in CDM, Vietnam hopes to show its willingness to contribute to global environmental protection while looking for additional investment and for technology transfer.

In June 2003, the Vietnam government designated the National Office for Climate Change and Ozone Protection, part of the International Cooperation Department of the Ministry of Natural Resources and Environment, as the CDM National Authority.

Failure to Meet World Commission on Dam and Clean Development Mechanism criteria

The Clean Development Mechanism Project Design Document (PDD) produced by Vietnam Electricity (EVN) for the Buon Kuop hydropower dam states that: "The project activity contributed positively toward sustainable development and satisfies the sustainable development criteria for CDM projects set by the Designed National of Authority of Vietnam."

The PDD and EIA reports emphasize that, "The main negative impacts on the environment are due to construction. However, all these impacts will be addressed through adequate mitigation measures and will cease after the completion of the construction phase. Preventive and mitigation measures are planned during the operation period to prevent and/or reduce any adverse impacts." However, the local people in Eatung and Buon Dzai villages are still faced with a polluted environment, inadequate housing, increasing diseases, serious losses of crops, and water and sanitation issues.

Unfair Compensation



The budget of the Boun Kuop Dam project indicated that 902 hectares of agricultural land would be lost, but only 154 hectares would be purchased as replacement land. In reality, the amount of land lost to the construction and operation phases is higher than shown in the documents, as the budget did not take into account the land that would be lost in the operational phase. Discussions with Buon Dzai villagers indicated that in providing compensation, the dam builder excluded 21 villagers affected directly by dam, and those who did receive compensation found it unfair. “The exclusion of 21 households and unfair compensation for villagers prove that the dam builder and local government were irresponsible,” a village leader said.

Compliance with WCD Strategic Priorities

A report entitled *Future Dams: Recommendations to Swedish Stakeholders on Implementing “Dam and Development – A new framework for decision making”* was written to help Swedish actors apply international “best practices” guidelines for dam building in developing countries. The Buon Kuop Dam is not in compliance with the report’s seven strategic priorities:

Strategic Priority 1: Gaining Public Acceptance

Strategic Priority	Non-compliance issue
When projects affect the livelihoods of permanent residents and nomadic people, the project owner shall pursue a planning and negotiations process which ensures that the population’s legal representatives and traditional leaders can participate actively in the planning process and affect its outcome.	During the operation phase beginning in 2009 to the present, households along the river have been losing their land and property. They are still waiting for compensation. 50 households made a claim for damages, and have received no response.

Strategic Priority 4: Sustaining Rivers and Livelihoods

Strategic Priority	Non-compliance issue
The impact assessment should include an analysis of those economic values which are lost through deteriorated opportunities for fishing, agriculture, hunting and other types of natural resources use.	The value of fishing is not included in the Buon Kuop Hydropower Project EIA report.
When negative impacts cannot be avoided, satisfactory compensatory measures should be taken.	No compensation has been provided from 2009 to the present. The EIA fails to propose compensation and benefit sharing agreements beyond recommendations.
Well-planned water infrastructure means positive development opportunities for the local population through improved cultivation (irrigation) or access to electricity.	Because the river no longer flows naturally, the water has become polluted. Local people lack access to clean water, causing them to suffer from diseases.

<p>Ecosystem and social and health issues shall be valued as an integral component of the project when decisions are made and impact avoidance shall be prioritized. The health situation in the entire affected area shall be better after the project's completion than before.</p>	<p>In a petition letter by residents in Eana commune, they complain about increasing diseases, subsidence of housing, and the loss of crops.</p>
<p>The need for safety is provided for by design, operation, permit control and maintenance of dams and their discharges. Further, the operational regime must be analyzed in regards to the safety of people residing within the project-affected area.</p>	<p>Project documents fail to present information about operation, and their discharges, as they relate to Eana commune safety concerns. Residents close to the spillway are afraid of water fluctuations.</p>

Strategic Priority 5: Recognizing Entitlements and Sharing Benefits

Strategic Priority	Non-compliance issue
<p>If the affected population so desires, lost land shall, as far as possible, be replaced with new land of equal or better value. The resettlers should participate in the search for new areas. Alternative sources of livelihood shall, if the owners so desire, be replaced with assets of the same nature. The transition period, before resources such as forests, cultivation, etc... are recreated, demands that other forms of meaningful livelihoods are offered to those affected.</p>	<p>Rather than improving the livelihoods and quality of life of effected people, the Buon Kuop Dams has caused health, environmental and other social-economic problems.</p>

Strategic priority 6: Ensuring compliance

Strategic Priority	Non-compliance issue
<p>The project owner is responsible for ensuring that relevant laws, regulations and recommendations are followed. A monitoring and evaluation system shall exist which can respond to changed conditions with corrective action. All stakeholders understand the agreements entered into, and these are legally binding.</p>	<p>The dam builder and funders have only paid lip-service to the local communities' demands. In reality, community members have received no compensation, health care, or income options.</p>

Community Advocacy and Opposition to the Project

The Buon Kuop Dam project connected with the National Grid and began producing electricity in September of 2009. At that time, the local people put pressure on the local government to solve the flooding problems in Eatung and Buon Dzai villages. Villagers organized meetings,



collected signatures household by household, and sent two recommendation letters directly to the relevant authorities (the first letter was sent in May of 2009 and the second letter in September of 2010). Under pressure from the local villagers, the dam builders and local authorities went to the affected area to check the damage from the spillway. But the local villagers didn't receive any compensation or a statement from the local government.

50 households wrote a letter to the district and provincial governments, as well as the management board of the project, to report on the problems the local people are facing: "We, the 50 people living in Eatung and Buon Dzai, have been facing negative impacts due to the Buon Kuop Dam on the Srepok River. We hope the relevant authorities will monitor and solve these problems in this area." The villagers went on to tell about the ways in which they have been suffering:

- » Irregular water fluctuation, increased riverbank erosion, poor housing conditions, destruction of coffee plantations and other agricultural land as well as people's property, and fishery resources have declined, affecting local livelihoods.
- » Human health has been affected by flood water, causing skin rashes, red eyes, malaria, and diarrhea.
- » Some people have left their homes in search of employment and food, and some of them have had to move to the city to find jobs.

Until now, the local people from Eatung and Buon Dzai villages are still waiting for a reply from the management board of the project.

Conclusion

The Buon Kuop Dam project has threatened the health, environmental, and socio-economic rights of affected communities in Eatung and Buon Dzai villages, Eana commune, Krong Ana district, Daklak province, Vietnam. The local people wrote a petition letter to the relevant authorities but did not receive any feedback.

The Buon Kuop Dam project has failed to meet CDM requirements regarding the objective of Kyoto Protocol and the WCD compliance based on Strategic Priorities No. 1, 4, 5, and 6. The project's request for CDM credits should be rejected on the basis of an inadequate EIA and PDD, inappropriate compensation, and most importantly because the dam cannot satisfy the sustainable development objective of the Kyoto Protocol. These problems must be solved before the project can satisfy CDM criteria.

References

- Project Design Document form of the Buon Kuop hydropower dam project (PDD – CDM) – Version 03.
- Environmental Impact Assessment report for Buon Kuop hydropower dam project.
- Buon Kuop hydroelectric project – Vietnam of Bank track (http://www.banktrack.org/show/dodgydeals/buon_kuop_hydroelectric_project).

- Comments on the Clean Development Mechanism Project Design Document for the Buon Kuop Hydropower Project, Viet Nam from NGO forum of Cambodia
- Integrated water resources management in Srepok river basin supported by MARD - DAN-IDA



EARTHRIGHTS INTERNATIONAL

EarthRights International (ERI) combines the power of law and the power of people in defense of human rights and the environment. We specialize in fact-finding, legal actions against perpetrators of earth rights abuses, training for grassroots and community leaders and advocacy campaigns. Through these strategies, ERI seeks to end earth rights abuses, provide real solutions for real people and promote and protect earth rights.

For more information about ERI, visit www.earthrights.org



This volume is comprised of writings by alumni of the EarthRights School Mekong. The Mekong School is a training program for civil society advocates from the Mekong Region (Tibet/China, Burma/Myanmar, Lao PDR, Thailand, Cambodia and Vietnam) whose work focuses on human rights and the environment.

The authors featured in this volume represent communities from the Mekong River's origins on the Tibetan plateau to the Mekong Delta, where the river completes its 4,350 km journey and empties into the South China Sea. Mekong School alumni speak twenty-seven different regional languages and are committed to the shared goal of strengthening environmental protection in the Mekong region.

The papers presented here take an in-depth look at the impacts of large-scale infrastructure projects and how citizens are engaged in advocating for more equitable development in the Mekong region. It is hoped that these reports will inspire further work towards greater public participation and transparency in development planning in the Mekong region.

Find out more about the Mekong School and EarthRights International at www.earthrights.org.

