

# Mekong River Dams

National Laws to Address Environmental and  
Human Rights Issues, and Obstacles to Enforcement

by EarthRights International's  
Mekong Legal Advocacy Institute (MLAI)  
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**EARTHRIGHTS INTERNATIONAL**

## **Mekong Legal Advocacy Institute (MLAI)**

In May, 2009, EarthRights International founded the Mekong Legal Advocacy Institute (MLAI) in order to support public interest lawyers, provide training and networking opportunities in human rights and environmental law, and promote public interest litigation in the Mekong region.

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# Introduction

In the Mekong Region, one of the most significant developments affecting the environment and local people's livelihoods are plans to build large hydropower dams on the mainstream of the Mekong River. These proposals originated during the Cold War, but the US-Vietnam war in the 1970s, and the global rise of environmental awareness among the major Asian funding sources (World Bank and ADB) during the 1980s and 1990s, prevented any of these dams from going forward.

However, in the dawn of the 21<sup>st</sup> Century, China has taken a larger economic role, both globally and in Southeast Asia, especially with regard to dam building. Furthermore, the ADB and World Bank overcame intransigence toward large hydropower with the Nam Theun II Dam in Lao PDR, and now they also are pushing for more of the same. There are currently at least 11 dams proposed for the Lower Mekong River in Thailand, Lao PDR, and Cambodia. While Vietnam has not proposed any mainstream dams, they have built several dams upstream of Cambodia on Mekong tributaries such as the Sesan River, with severe impacts to local Cambodian communities.

In the middle of this situation is the Mekong River Commission (MRC). The MRC is funded by Western countries, but decision-making power is held by national governments of Lao, Cambodia, Thailand and Vietnam. This has created significant friction, with donors seeking Western-style economic, environmental and social analysis, but Mekong governments pushing for rapid large-scale development. The governments claim that Mekong dams will alleviate poverty, but past dam building in the Mekong Region (and globally) has been riddled with corruption and massive environmental devastation.

In order to get in front of this new push for dam construction on the Mekong River, the MRC has initiated a Strategic Environmental Assessment (SEA) for the 11 dam proposals. The first public step in the SEA was a call for local groups and people to submit comments on what the SEA should include. Although legal issues were not mentioned by the MRC in their call for comments, the laws of host countries will be central to efforts by local communities to confront the dams proposals.

In response to the MRC's call for initial scoping comments, EarthRights' Mekong Legal Advocacy Institute (MLAI) organized lawyers from each of the Mekong Countries and asked them to gather information about their country's laws related to hydropower construction and operation. Five legal subjects were considered for each country: Public participation, Access to information, Environmental impact assessment, Environmental protection, and Land confiscation and resettlement.

MLAI then analyzed these laws in order to consider if they include an appropriate legal framework, as well as whether each host country has the ability and political will to enforce their environmental laws. In most cases, MLAI found that Mekong countries have a long way to go in enforcing their environmental and human rights laws.

Mekong Region countries often have many well-developed laws concerning public advocacy, environmental protection and resettlement. Unfortunately, they are poorly implemented and unscrupulous officials often ignore them with impunity.

This booklet presents the scoping comments submitted on behalf of each of the six Mekong countries, including two (Burma and China) that are not members of the MRC. Despite the lack of official MRC representation, China is deeply involved in the Mekong River, because they are currently building a cascade of 8 dams on their part of the river (Called the Lancang), as well as showing interest in funding and constructing many of the Lower Mekong dams as well. Burma, while relatively unrelated to the Mekong dams, is planning their own dam-building frenzy on the Salween, Irrawaddy, and Chindwin rivers, with the majority of these being paid for and built by China and Thailand.

Thus, all Mekong countries have a close association with the Lower Mekong dam proposals, and the local people deserve to have their voices heard concerning the legal issues surrounding them.

# 1. Burma

The Mekong Legal Advocacy Institute is submitting these comments on the proposed Strategic Environmental Assessment of Lower Mekong Mainstream Dams, with regard to Burma. We note first that there will be little impact on Burma from Lower Mekong dams. In addition, Burma is beset by a military dictatorship, the State Peace and Development Committee (SPDC), that rules without respect for rule of law and without impunity for egregious human rights violations. There has been no valid constitution since 1988, and many laws are enforced only to benefit the SPDC and its cronies.

The US State Department 2008 Country Report on Burma (<http://www.state.gov/g/drl/rls/hrrpt/2008/eap/119035.htm>) states:

*“The judiciary is not independent of the government. The SPDC appoints justices to the Supreme Court, which in turn appoints lower court judges with SPDC approval. These courts adjudicate cases under decrees promulgated by the SPDC that effectively have the force of law. The court system includes courts at the township, district, state, and national levels. While separate military courts for civilians do not exist, the military regime frequently directs verdicts in politically sensitive trials of civilians.*

*“The government continue[s] to rule by decree and [is] not bound by any constitutional provisions providing for fair public trials or any other rights. Although remnants of the British-era legal system remain formally in place, the court system and its operation [are] seriously flawed, particularly in the handling of political cases. The misuse of blanket laws--including the Emergency Provisions Act, Unlawful Associations Act, Habitual Offenders Act, Electronic Transactions Law, Video Act, and Law on Safeguarding the State from the Danger of Subversive Elements--as well as the manipulation of the courts for political ends continue[s] to deprive citizens of the right to a fair trial and to stifle peaceful dissent. Executive Order 5/96, which provides for*

*the arrest of any person deemed a threat to the National Convention and the “roadmap to democracy,” effectively stifle[s] open debate among citizens. Pervasive corruption further serve[s] to undermine the impartiality of the justice system.”*

With this state of affairs, there is little reason to believe that local people will have the right to information or participation. In addition, any attempts to perform Environmental Impact Assessments (EIAs) or provide compensation are invariably twisted and eventually stolen by the SPDC. Thus dam building and other development in the country cannot be condoned, as it will only benefit the rich and powerful, and local people will be abused, tortured and killed if they make any attempt at voicing their concerns. See [www.salweenwatch.org](http://www.salweenwatch.org) and members' reports therein for more details.

## 2. Cambodia

### Introduction

The Mekong basin is critical to Cambodia, covering more than 84% of Cambodian territory.<sup>1</sup> The Royal Government of Cambodia (RGC) is building hydropower dams at Kamchay, Stung Atay and Lower Stung Russey Chrum, Kirirom III and Tatay, with 10 other projects undergoing feasibility studies and 13 Memorandums of Understanding signed.<sup>2</sup> A pre-feasibility study has been completed for the Sambor Hydropower Project on the mainstream Mekong, 35 km north of Kratie province, and a pre-feasibility study is being prepared for the Stung Treng Dam on the mainstream Mekong in Stung Treng province as well.<sup>3</sup>

Article 59 of the Cambodian Constitution says the State shall establish a “*precise* plan of management [emphasis added]” for natural resources such as water. An objective of the RGC is: “In developing hydropower resources, the Government will carefully analyze all aspects involved, especially the economic benefits, and the environmental and social benefits.”<sup>4</sup> Although the RGC 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 and enforcement of existing relevant legislation, remain critical constraints to the sustainable use and conservation of natural resources and biodiversity in Cambodia.”<sup>5</sup> Also, the institutional structures and functions of relevant line ministries in Cambodia dealing

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1 “Scoping Study of Existing Frameworks Related to the World Commission on Dams Strategic Framework – Cambodia” by Sam Chamreoun, IUCN, p.4.

2 “Hydropower Development in Cambodia” presentation by Mr. Tung Sereyvuth, Deputy Director of Energy Department, Ministry of Industry, Mines and Energy at the MRC, Regional Stakeholder Meeting in Laos, 25-26 September 2008.

3 “Strategic Environmental Assessment of Hydropower on mainstream Mekong River”, presented by the MRC commission, July 2009.

4 Rectangular Strategy for Growth, Employment, Equity and Efficiency 2003-2008.

5 “Scoping Study of Existing Frameworks Related to the World Commission on Dams Strategic Framework – Cambodia” by Sam Chamreoun, IUCN, p.2.



with water resource management are highly compartmentalized, lacking mechanisms for coordination, feedback and regulatory responsibility.

In this context, Samreth Law Group and the Mekong Legal Advocacy Institute (MLAI) believe any assessment of dams on the Mekong mainstream should be delayed until there is precise plan of management for the use of water relating to hydropower dams, which allows for careful assessment of the cost and benefits of such projects. Article 9 of the Water Resources and Management Law states that Ministry of Water Resources and Meteorology (MOWRAM) shall be responsible for preparing a national water resources plan. This plan should, as a minimum, address in detail the following issues:

- a. public participation;
- b. access to information;
- c. environmental and social impact assessment;
- d. avoiding or mitigating environmental impacts, and
- e. resettlement.

Although the topics for the MRC scoping study do not include legal issues, Samreth law Group and MLAI are of the view they should be included in any adequate scoping study. This paper addresses the legal aspects for each of the five issues listed above in relation to hydropower dams in Cambodia.

## **Public participation**

Public participation is a fundamental right for Cambodians. Article 35 of the Constitution states; “Khmer citizens of either sex shall be given the right to participate actively in the political, economic, social and cultural life of the nation” and “[any] suggestions from the people shall be given full consideration by the organs of the State”.

By law, there is a positive duty on the RGC to encourage public participation. Article 7 of the Water Resources and Management Law (WRML) states; “The Royal Government of Cambodia shall encourage the collaboration with and participation of the relevant agencies, private sectors, beneficiary groups, NGOs and International Organizations in all activities related to the management, investment, exploitation, conservation and development of water resources.” Article 16 of the Environmental Protection and Natural Resource Management Law (EPNRML) 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”.

However, the legal framework does not provide clear procedures for Cambodian citizens to realize their right to participate or for the RGC to fulfill this duty. Under article 17 of the EPNRML, the government is meant to issue a sub-decree on the procedures for public participation; however this sub-decree is yet to be adopted. The draft Environmental Impact Assessment (EIA) Guidelines do contain some requirements for public participation, although they too lack detail (see EIA section below).

The public participation of affected communities in dams currently being built in Cambodia has been limited. For example, “[approximately] 30,000 people living upstream will be negatively affected by construction and operation of the Lower Sesan 2 Dam, and tens of thousands more downstream. However, only a few hundred people were consulted, and without proper documentation”.<sup>6</sup> Here, public participation fell short of the standard set out in the Cambodian Constitution.

Until there are clear procedures in Cambodia for public participation in a dam project’s identification, construction, operation and decommissioning, for all relevant stakeholders including illiterate and indigenous people, decisions on whether to build dam projects on the mainstream Mekong should be postponed. Additionally, as dams planned for the Mekong mainstream require prior cross-border consultation by the state in accordance with the Mekong River Commission’s Procedures for Notification, Prior Consultation and Agreement, the RGC should publicly announce how it will incorporate public participation into the process of agreement.

Otherwise, it is not possible to show there is acceptance of a project on the part of stakeholders before a proposed hydropower project is approved. Greater public participation will also lead to more informed decision-making processes as well as lead to fewer post-construction disputes.

## **Access to information**

Meaningful public participation in the management of water resources is heavily dependent upon access to information of project documents, including pre-feasibility studies, EIA reports and project design and operation reports. Lacking a strong tradition of public participation in environmental assessment and without detailed procedures, the public has difficulty asserting its right of

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6 Lower Sesan 2 Hydro Project EIA Review, prepared by the NGO Forum on Cambodia, August 2009, pp 5-6.

access to information.

Article 16 of the EPNRML states; “The Ministry of Environment shall, following proposals by the public, provide information on its activities”. The draft EIA guidelines provide for “focus group discussions” to “inform the public about development projects”, however no further detail is provided (see EIA section below).

Article 8 of the WRML does provide for a publicly available inventory of the location, quantity and quality of water resources in Cambodia; “except those classified as confidential”. As there is no detail as to what information will be classified as confidential, this exception is too wide. Also, the 3S Rivers Protection Network (3SPN) sent letters to the CNMC and VNMC requesting hydrological data and rainfall data on the Srepok River, but no response was ever given.

There are still no detailed procedures for the provision of adequate information about water resources relating to dams in Cambodia.

## **Environmental Impact Assessment (EIA) requirements**

Article 6 of the Law on Environmental Protection and Natural Resources Management establishes a general EIA requirement “on every project and activity whether private or public and shall be examined and evaluated by the Ministry of Environment before it is submitted to the Royal Government for a decision”. A list of those projects requiring an Initial EIA (IEIA) and/or EIA was included in the Sub-decree on the EIA Process, and includes hydropower dams.

However, there are still no official EIA guidelines in place. Draft guidelines and a draft *prakas* (declaration) on the implementation of the guidelines were released for public comment in February 2008. A second “Draft General Guidelines for EIA” was released in late 2008. These require that a short initial EIA is prepared for a proposed project and reviewed by the MoE. If it is revealed that there are “severe social and environmental consequences, the project owner will be required to prepare an EIA.” The term “severe” is not defined.

The Rivers Coalition in Cambodia (RCC) made the following recommendations to the Ministry of Environment (MoE) on the content of the February 2008 draft guidelines:<sup>7</sup>

- a. more detail is needed in the minimum content of an EIA;
- b. more detail is needed on how public consultation takes place in the EIA process;
- c. more clarity on how the MoE will base its decision on whether or not to approve a project;
- d. strengthen the Social Impact Assessment of the EIA;
- e. set out how the project will be monitored during and after construction, and
- f. set out a dispute resolution process for disputes relating to the EIA process.

The Human Rights Program at Harvard Law School (HRPHLS) also wrote a letter to the EIA Department at the MoE outlining procedural and substantive concerns on public participation, institutional review and approval and post-EIA safeguards.<sup>8</sup>

As the September 2008 draft EIA guidelines have not substantially changed from the February 2008 draft, the comments of the RCC and HRPHLS are still valid. Furthermore, Sam Chamreoun, Director, Department of Environmental Planning and Legal Affairs, Ministry of Environment, states that managing and enforcing EIA requirements in Cambodia faces a number of obstacles:<sup>9</sup>

*“First, EIA requirements are not well known, and various sector ministries and project owners are therefore not yet applying them. The authority of the Ministry of Environment to enforce the requirements appears to be limited by these circumstances. Another problem is the limited capacity within Cambodia to conduct EIAs.”*

Finally, there is currently no law in place in Cambodia detailing when a cumulative impact assessment is needed or required. Given that a cascade of dams is planned on the Lower Mekong River, a cumulative impact assessment should be deemed necessary in order to fully assess the project’s feasibility and impacts. Procedures on how to carry out this cumulative study should

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7 Letter from RCC to MoE, dated 6 March 2008.

8 Letter from the Human Rights Program at Harvard Law School to the EIA Department at MoE, dated 12 March, 2008.

9 “Mekong Region Water Resources Decision-making”, IUCN, 2006, p.10.

also be established prior to any decision-making process for a project planned where numerous projects are located.

## **Avoiding or mitigating environmental impacts**

Cambodia produces the fourth most freshwater fish in the world after China, India and Bangladesh; some 850 species of fish have been reported on the Tonle Sap lake and lower reaches of the Mekong River.<sup>10</sup> It is also estimated that more than 70% of the total fish catch in the Mekong basin is dependent upon fish migrations, and the mainstream Mekong is the corridor for most long-distance migrations. Dams on the mainstream Mekong, especially in the middle and lower parts of the Mekong, including Cambodia, will therefore have a greater impact on fisheries than dams on tributaries and the upper parts of the Mekong.<sup>11</sup> The impact to fisheries would also likely cause significant impact on people's food security, health and nutrition, as more than 80% of Cambodia's population depends on fish as a main source of animal meat protein<sup>12</sup>.

The MRC's research notes that the Sambor rapids and associated deep pools are important fish habitats, particularly for spawning and refuge purposes. The construction of the Sambor Dam would have "significant" impacts on migratory fish stocks.<sup>13</sup>

Furthermore, an international expert group recently found that based on available information there is not at present any technological solution to enable effective fish migration across dams, and any dam on the mainstream Mekong in the middle and lower parts "will have a major impact on fisheries and serious economic and social implications".<sup>14</sup>

There is a requirement in the draft EIA guidelines for an Environmental Management Plan for each project that must include a summary of protection measures, trainings and a monitoring schedule. The significant environmental impacts to fish stocks and associated social and economic impacts alone

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10 "Scoping Study of Existing Frameworks Related to the World Commission on Dams Strategic Framework – Cambodia" by Sam Chamreoun, p.38

11 "Mainstream Dams as Barriers to Fish Migration: international learning and implications for the Mekong", Patrick Dugan in *Catch and Culture* Volume 14, No. 3 December 2008, p.11.

12 Kent Hortle, 2007.

13 Middleton, p.32.

14 Dugan, p.12.

underline why a more detailed and precise legal framework to regulate dams is needed before projects can be properly assessed and built.

## **Land confiscation and resettlement issues**

The construction of large hydropower projects raises serious issues regarding resettlement and compensation. By its Constitution and Land Law, the RGC is required to provide fair and just compensation in advance for any taking of land.<sup>15</sup> These provisions are bolstered by international conventions to which Cambodia is a party. For example, the Convention on Economic, Social and Political rights provides a strict framework for eviction and resettlement procedures and minimum standards.

However, these legal principles are not being adequately implemented.<sup>16</sup> Local communities are often evicted in a process that lacks due process or adequate compensation for their loss of land and livelihood, despite domestic and international law obligations. This includes the communities being resettled due to the dams currently being built in Cambodia. While estimates vary, it is likely that tens of thousands of families will be affected by mainstream dam operations. The proposed project locations suggest that the poorest sectors of society, those most completely reliant on the land for their livelihoods, will be the most adversely affected.

The RGC is currently in the process of drafting a Resettlement Law and a Circular on Informal Settlements. It is the opinion of Samreth Law Group and MLAI that it would be beneficial if more detailed legal procedures are developed, so long as the procedures are consistent with existing Cambodian laws and have been developed in a process of meaningful public participation. More importantly, implementation of existing laws related to resettlement and compensation need to be improved before dams should be built on the Mekong mainstream.

## **Conclusion and recommendations**

There are two main issues that need to be improved before dams on the mainstream Mekong can be properly assessed. First, there needs to be a precise and detailed plan of management of hydropower dams through

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15 Cambodian Constitution, article 44; 2001 Land Law, article 5.

16 See “Rights Raised: Forced Evictions in Cambodia,” Amnesty International, February, 2008.

the whole development cycle of identification, construction, operation and decommissioning. Second, the compliance and enforcement of existing laws and policies needs to improve. Until both of these imperatives occur, hydropower dams should not be built on the mainstream Mekong.

Samreth Law Group and MLAI recommend the following laws and procedures be put in place before dams are built on the mainstream of the Mekong:

- a. more detailed procedures of public participation and access to information are developed that accommodate indigenous and illiterate communities;
- b. more detailed environmental impact assessment guidelines are developed with the recommendations of the RCC in mind,
- c. avoiding or mitigating environmental impacts, and
- d. demonstrated commitment of governmental implementation of its land law framework, particularly relating to procedural rights, compensation and resettlement.

Samreth Law Group is a public interest law firm registered with the Bar Association of the Kingdom of Cambodia. Samreth Law Group is willing to assist relevant government authorities in the preparation of a more detailed legal framework without charging fees.

## 3. China

These comments regarding China's law and legal aspects of the assessment of mainstream dams on the Mekong are submitted on behalf of the Mekong Legal Advocacy Institute (MLAI) in Chiang Mai, Thailand. We address five core legal issues with regard to dam construction and operation: (a) Public Access to Information, (b) Public Participation, (c) Requirements for producing and enforcing Environmental Impact Assessments, (d) Preventing, avoiding or mitigating environmental impacts, and (e) Land confiscation, Compensation and Resettlement concerns.

Each of these issues has a direct impact not only on the procedural steps required for building and operating dams, but also the livelihoods of people living all along the Mekong River who depend on a thriving, free-flowing river for their very existence. Therefore, it is incumbent upon the MRC to be aware of, follow and enforce these legal provisions throughout the process of the Strategic Environmental Assessment.

### **Access to Information**

The Constitution of the People's Republic of China (PRC), the Legislation Law of 2000, and the Environmental Impact Assessment Law of 2002 provide for public access to information. Information accessible by the public includes the policies, laws, plans and major projects that have been enacted, and the decision-making process used to enact them.

The Regulation of the PRC on the Disclosure of Government Information of 2007 took effect May 1st, 2008.

- It promotes official transparency and safeguards the public's right to know, the right to participate and the right to supervise. The regulation is China's first information disclosure legislation and requires governments to release data on such public issues as land acquisitions, residence relocations and related compensation.
- The regulation also sets limits to public disclosure. Article 14 states that "no administrative organ may endanger national security, public security, economic security or social stability when disclosing government information."

Trial Measures on Open Environmental Information were adopted by



the State Environmental Protection Administration on February 8, 2007 and effective on May 1, 2008. These measures:

- propel and regulate the disclosure of environmental information by administrative departments in charge of environmental protection and enterprises, and
- maintain the rights and interests of citizens, legal persons and other organizations to obtain environmental information and promote the public's involvement in environmental protection.

Access to information is also hindered by China's state security regulations. Information about the water resources of international rivers (including hydrology, water quality, sediment, water, international river conditions and circumstances of the natural ecosystems, etc.) is a State 2nd Secret-level issue. Real-time information about international rivers water levels and forecasting results, are State 3rd Secret-level matters.

So, while China has many laws and regulations to provide information, there are also provisions that are more than ample to prevent the release of anything the government wants to keep secret. With regard to downstream impacts of their Mekong Mainstream dams, this means that villages along the river cannot currently obtain real-time knowledge of unseasonal river flows. This has already had devastating effects in Chiang Saen and Chiang Khong Districts, Thailand and will continue to do so as long as the China's government remains so secretive about their dam operations.

## **Public Participation**

The PRC Constitution requires public participation in some cases. For example, the 2002 EIA Law establishes public participation in EIAs during the feasibility study phase. It states that draft EIAs of any important plans or projects, except those concerning national security that will have an adverse impact on the environment or affect public environmental rights must be communicated through public hearings, workshops or other channels.

Most recently, the Ministry of Environmental Protection drafted the Regulation of the People's Republic of China on Environmental Impact Assessment of Planning. It was adopted by the State Council on August 12th, 2009 and came into force on October 1st, 2009. It includes Article 25 (3), regarding follow-up assessment of environmental impacts of planning, which shall include public opinions of environmental impact while the planning is implemented.

The Land Administration Law of 2004 establishes provisions for public participation in resettlement plans, including the displaced people. For land confiscated by the State, the requisition plan shall be publicly announced by the people's government, with comments and suggestions solicited from local organizations and people. Disagreements are subject to negotiation and then, arbitration, with no mention of litigation.

China's resettlement policies, however, are subject to severe corruption, with much of the money for compensation being diverted to other uses by local or County authorities. Further, intimidation and violence by security officials are often used to prevent active participation, as seen during the 2008 Beijing Olympics, in the experiences of bereaved parents following the 2008 Sichuan earthquake, and in other venues.

Opposition to dam construction has also been targeted by Chinese authorities, impeding the right to public participation. "Protestors of the Three Gorges Dam in China have suffered from government oppression. Dai Qing, an active opponent of the project, was imprisoned for ten months for editing the book "Yangtze! Yangtze!," which criticized the dam project. The book was also banned in China and remaining copies were collected and burned."<sup>17</sup>

## **Environmental Impact Assessment**

EIA was originally mentioned in the Environmental Law for the PRC of 1989. More recently, the requirements for EIA were laid out under the EIA Law of 2002 and subsequent Regulations. Thus, EIA is required for the exploitation, utilization and development of river basins; as well as specific plans concerning energy production and water conservation.

When preparing EIAs, public access to information and public participation are guaranteed. The EIA law and regulations require that Draft EIAs of any important plans or projects that will have an adverse impact on the environment or affect public environmental rights must be communicated through public hearings, workshops or other channels.

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17 Krech, McNeill and Merchant, *Encyclopedia of World Environmental History A-E*, pg. 283 (Routledge).

Also, the Regulations on Administration of Construction Project Environment Protection require an EIA to be prepared. Further, the Technological Guidelines for EIA, 1993 state that a project EIA must include assessment of:

- the environmental components,
- a general survey and assessment of people's health,
- socio-economic conditions
- sites of scenc and historical interest, valuable monuments and relics.

With regard to enforcement, the EIA approval authority can order monitoring and mitigation. In addition, the Developer must protect the environment during construction.

While these provisions sound powerful, many domestic EIAs remain state secrets, and there is no law that requires China's companies to produce EIAs for foreign projects. There are some guidelines for the China Ex-Im bank, but nothing is mandatory. Thus, China's involvement in Lower Mekong dams could lead to significant environmental impacts that face little or no comprehensive, multidisciplinary analysis or disclosure in an EIA.

## **Avoiding or mitigating environmental impacts**

China has several laws and regulations that protect the environment and relate to dam construction and operation. Most significantly, many of these laws state that migratory fish must be protected from dams, including the Water Law of 1988 and its 2002 revision, the Law on Wildlife Protection of 1988, and the Fishery Law of 2007. In addition, the Regulations on Nature Reserves, 1994 create protected areas and related buffer zones with a higher conservation status, and the Law on Wildlife Protection, 1988, establishes protected areas for threatened and endangered species.

In other rivers, however, these laws and regulations have failed to protect China's endangered aquatic species, like the Yangtze dolphin or the Mekong giant catfish. As the MRC well knows, the Mekong River's aquatic biodiversity is without parallel, but remains extremely vulnerable to migration blockages. Passage for migratory fish, whether by ladder or bypass, is impossible for the volume of migratory fish in the Mekong, no matter what the laws of any nation say, including China.

## **Resettlement and compensation**

China has extensive experience and many laws that cover resettlement. For example, the Constitution requires compensation when the State confiscates private property. Also, the Land Administration Law regulates resettlement and compensation.

Other laws that address resettlement and compensation include:

- Regulations for Land Acquisition and Resettlement 1991
- Regulations on Resettlement of the Three Gorges, 2001
- Civil Litigation Law and General rules.

Recently the Chinese have tried two different compensation schemes: Land for land, and long-term financial payments. A recent study by EarthRights researchers found that, while the financial payments led to more income, the overall level of stress the same for both schemes because all of the relocated people were very concerned about their new livelihoods. This was because they had to find new jobs, often had to migrate for work, and were forced to completely change their way of life. More efforts at overcoming this stress and providing social safety nets are essential.

So, even though China has great experience in dealing with land confiscation and resettlement, and has established laws to regulate these practices, there remain vast social, economic and environmental pitfalls that require additional study and adaptations.

## 4. Lao PDR

These comments regarding the law of the Lao People's Democratic Republic (Lao PDR) and legal aspects of the assessment of mainstream dams on the Mekong are submitted on behalf of the Mekong Legal Advocacy Institute in Chiang Mai, Thailand. We address five core legal issues with regard to dam construction and operation: (a) Public Access to Information, (b) Public Participation, (c) Requirements for producing and enforcing Environmental Impact Assessments, (d) Preventing, avoiding or mitigating environmental impacts, and (e) Land confiscation, Compensation and Resettlement concerns.

Each of these issues has a direct impact not only on the procedural steps required for building and operating dams, but also the livelihoods of people living all along the Mekong River who depend on a thriving, free-flowing river for their very existence. Therefore, it is incumbent upon the MRC to be aware of, follow and enforce these legal provisions throughout the process of the Strategic Environmental Assessment.

### **Public Access to information**

Fundamental rights like access to information, freedom to engage in advocacy and environmental protection mechanisms are very new. There is no specific legislation in the Lao PDR on public access to information. As a result, information access and public participation are still not being properly implemented for most development activities. This glaring omission makes public participation in government activities seriously difficult if not outright impossible. The result is that any dams on the Mekong built under Lao law will lack transparency and will ultimately trample local peoples livelihoods.

Further, the Lao laws are not clear regarding secret and public information. The Lao people need more time to build knowledge on legal rights, particularly local communities that are familiar with sustainable use of natural resources and customary livelihoods.

## **Public participation**

Under the Constitution, Article 37, all Lao citizens have equal right to engage in politics, economics, and social-cultural family development. The Environmental Law, Article 8 (5) requires "participation from villagers likely to be effected by the development projects or operations."

Public participation under Lao law is also provided in the National EIA Regulation, the Regulation on Implementing Environmental Assessment for Electricity Projects, and more particularly in the Summary of the National Public Involvement Guidelines, 2003.

These guidelines provide a definition of public involvement and its component parts; introduce the main principles underlying the consultation and participation process; and provide clarification of public involvement terminology.

Despite these laws and guidelines, in many significant projects there is still no public involvement in decision-making. In others, public participation is minimal. The end result is that local people's knowledge of the river and their adaptations to natural variability will be ignored or lost, and future prospects for the river and its people are quite dim.

## **EIA requirements and enforcement**

The Lao Constitution, Article 19, requires the protection of the environment.

According to the Environmental Protection Law, 1999, National EIA Regulation, and the Regulation on Implementing Environmental Assessment for Electricity Projects, Environmental impact assessments (EIAs) must

- include an assessment of social, health and cultural issues;
- describe the existing socio-economic and natural environment in the area(s) affected by the project concerned;
- identify and describe the environmental, social and economic impacts of the project;
- compare the impacts with regard to one or more feasible alternatives to the project;
- identify unavoidable impacts and propose ways to compensate for them;
- select one alternative that best accomplishes the purpose of the project, while best protecting environmental values;

- supplement existing published information with sufficient field studies to adequately determine the existing conditions in the area(s) affected.

The Environmental Protection Law requires a project proponent to prepare an EIA report to the concerned environmental management and monitoring unit for an environment compliance certificate to be issued before starting the project.

The Environmental Protection Law, Water and Water Resources Law, Electricity Law, National EIA Regulation, the Regulation on Implementing Environmental Assessments for Electricity Projects, and Environment Management Standards for Electricity

Projects all require compliance with environmental and social commitments made in the EIA.

Non-compliant persons and organizations are considered to be in violation of legal instruments when they fail to follow the EIA. Penalties for violation are specified in the Environmental Protection Law, Electricity Law, and National EIA Regulation.

In practice, EIAs for development projects are prepared and provided by the investor, and a government agency like Environmental and Water Resources Administration rarely disapproves EIAs. The lack of an independent EIA agency and monitoring from various stakeholders/local group and civil society means that there is no public oversight of EIA approval. Since EIAs are not rigorous in Lao, and Rule of Law is often ignored by Laotian Courts, the underlying laws and emergent protection and mitigation requirements have little if any force and do not provide any benefits to local people or the environment.

The Theun-Hinboun Expansion Project in Laos rejected an EIA produced by Dr. Murray Watson and hired a Norwegian company, Norplan, to complete the EIA.

Watson said that the Norplan EIA comes to different conclusions regarding the risks of the planned expansion project. According to Watson, “the Norplan EIA seriously underestimates the risks of the Theun-Hinboun Expansion Project, and understates or ignores the changes already experienced from the Theun-Hinboun Hydropower Project. They are deceiving the Lao Government and enabling their client to externalize costs.”

## **Planning & Management Criteria**

The Environmental Management Standards for Electricity Projects, and Lao Electric Power Technical Standards, 2004 provide a clear, common set of criteria for developing water and energy resources by using dams.

Unfortunately, the Lao PDR's agencies lack the capacity to fully utilize these criteria and management provisions, and are generally reliant on foreign assistance. Unsympathetic bureaucrats or influential officials can also stand in the way of compliance, so the planning and management provisions are not followed. Therefore, long-term management of resources will be skewed toward maximizing profits through electricity generation at the expense of local concerns.

## **Preventing, avoiding or mitigating environmental impacts**

The Water and Water Resources Law, 1996 states: "The responsible water authority shall determine quality standards for drinking water and used water that is drained into water sources or into some other place." The last part about "water that is drained into water sources" seems to be referring to water pollution.

The Law on Water and Water Resources, the Environment Protection Law, the Forestry Law, 1996 and the Electricity Law all have provisions to protect endangered species and demand environmental conservation.

These provisions remain mostly hypothetical, with unchecked pollution ongoing and little concern for endangered species like the Mekong giant catfish. Other environmental issues are completely overlooked, such as the needs of migratory aquatic species, impacts of reservoirs (even run-of-river dams create impoundments), or loss of transportation alternatives.

Water pollution is increasing, especially in Vientiane, from urban development and industrial pollution. Existing water supply systems tend to be outdated and in poor condition. Ground water contamination is growing in the larger cities from sewage and industrial wastes.

## **Land confiscation, Compensation and Resettlement issues**

Lao laws that provide for compensation to people adversely affected by the construction and operation of dams include:

- The Electricity Law, 1997,
- National EIA Regulation, 2000,



- The Regulation on Implementing Environmental Assessment for Electricity Projects, 2001, and
- Environmental Management Standards for Electricity Projects, 2001.

The Environment Management Standards for Electricity Projects law, as well as resettlement policy and guidelines on involuntary resettlement state that an affected person is entitled to receive direct or indirect benefit sharing.

Little is actually done to enforce these provisions. An example of this is the Theun-Hinboun Dam in central Laos. Recently the Theun-Hinboun Power Company admitted that 25,000 people in 61 villages—mostly subsistence farmers—have lost fish, rice, vegetables and drinking water as a result of the dam. A little compensation was allowed, but villagers still have not been compensated for fish losses of up to 90 per cent of their pre-dam catch.

International Rivers found that the project was in violation of Lao government resettlement law and the Equator Principles in numerous instances. The Theun-Hinboun Power Company is also failing to comply with its Concession Agreement and Resettlement Action Plan (RAP). These violations include: Compensation for loss of assets and livelihoods in the downstream villages as a result of the original Theun-Hinboun Project has not been paid [Violation of Lao resettlement law Article 6]; no provision of a range of resettlement options to the downstream villagers [Violation of Performance Standard 5], and no documentation on “good faith negotiations” with the affected indigenous communities [Violation of Performance Standard 7]. See <http://www.internationalrivers.org/en/southeast-asia/laos/theun-hinboun>.

Villagers use agricultural land for their livelihood, while businessmen use those lands to seek profit. When government policy is to promote investment in the country for economic growth some villagers agree, but when villagers who disagree with the concession they are not provided information. There is no rights protection mechanism for the community or individuals to litigate, nor is there any way to confront the company or authority responsible. There are no guaranteed rights that apply equally for everyone and everywhere. Conflict resolution methods for customary livelihoods through the legal system are narrow and limited, and fail to provide an adequate remedy.

The Lao Government and the MRC need to consider these questions: “What is investment for public interest? What is fair compensation? How should good governance principles be applied?”

When public interest, human rights and environmental protection conflict

with economic-social development, local communities generally lose their agriculture land and are left with a low quality of environment. They also face a high risk if they criticize the government policy or development projects. Some active community leaders were arbitrarily detained, many people received unfair compensation, and conflict related to land and natural resource is increasing. Still there is no social agency or mechanism to solve these conflicts. “Public interest” advocacy is limited to preserving social order by government officials, who use it to control freedom of expression and demonstrations/protests. Human rights defenders and lawyers are not allowed by the judiciary to engage in public interest litigation for civil society based on environmental and human rights issues.

## 5. Thailand

These comments regarding Thailand's laws and legal aspects of the assessment of mainstream dams on the Mekong are submitted on behalf of the Mekong Legal Advocacy Institute in Chiang Mai, Thailand. We address five core legal issues with regard to dam construction and operation: (a) Public Access to Information, (b) Public Participation, (c) Requirements for producing and enforcing Environmental Impact Assessments (EIA), (d) Preventing, avoiding or mitigating environmental impacts, and (e) Land confiscation, Compensation and Resettlement concerns.

Each of these issues has a direct impact not only on the procedural steps required for building and operating dams, but also the livelihoods of people living all along the Mekong River who depend on a thriving, free-flowing river for their very existence. Therefore, it is incumbent upon the MRC to be aware of, follow and enforce these legal provisions throughout the process of the Strategic Environmental Assessment.

### **Public Access to Information**

Thailand's 2007 Constitution has several sections that guarantee free information from the government and provide for public participation.

Section 56 of the Constitution states: "A person shall have the right to gain access to public information in possession of a state agency, state enterprise or local government organization, except if it will affect state security or public safety." Also, "A person shall have the right to receive information, reasons, and explanation from a state agency, state enterprise or local government organization before permission is given for implementation of any project or activity which may affect the quality of environment, health, and sanitary conditions, quality of life or other material of interest to him or her or a local community and shall have the right to express his or her opinion on such matters to agencies concerned for consideration."

These provisions are a new idea in Thailand, where the powerful bureaucracy is historically quite secretive. Attempts to gain access to government studies have had mixed success, but recent NGO efforts to gain access to the Environmental Impact Assessment for EGAT's Hatgyi Dam in Burma were successful thanks to the intervention of Thailand's National

Human Rights Commission (NHRC). The precedent of this case, which involves releasing information anathema to the military junta that rules Burma, provides hope for future efforts with respect to Mekong dams.

## **Public participation**

Constitutional provisions that provide for public participation include:

- Section 58: A person shall have the right to participate in the decision-making process of state officials in performance of the administrative functions which affect or may affect his or her rights and liberties.
- Section 59: A person shall have the right to present a petition and to be informed about the result of its consideration within the appropriate time.
- Section 60: The right of a person to sue a state agency, state enterprise, local government organization, or other state authority which is a juristic person to be liable for any act or omission by its government official, official or employee shall be protected.
- Section 67: The right of a person to give to the state and communities participation in the preservation and exploitation of natural resources and biological diversity and in the protection, promotion and preservation of the quality of environment for usual and consistent survival in the environment which is not hazardous to his or her health and sanitary conditions, welfare or quality of life, shall be protected. The right of a community to sue a state agency, state enterprise, local government organization or other state authority as a legal entity to perform the duties as provided by paragraph one and paragraph two shall be protected.
- Section 87: The state shall implement the Public Participation Policy as follows:
  - (1) encouraging public participation in the determination of public policy and the making of economic and social development plan both in the national and local level;
  - (2) encouraging and supporting public participation to make decision on politics and the making of economic and social development plan and the provision of public services;
  - (3) encouraging and supporting public participation in the examination of the exercise of State power at all levels in the form of profession or occupation organization or other forms;

- The Royal Decree on Guidelines and Procedures on Good Governance, 2003 states that public hearing are required prior to operating a government project.
- The Act on Establishment of Administrative Courts and Administrative Court Procedure, 1999 provides a channel for affected people to seek redress of grievances resulting from an act or omission by administrative agencies or State officials.
- The Royal Decree on Guidelines and Procedures on Good Governance, 2003 states that a public hearing must be arranged prior to the operation of any project.

These public participation laws are strong on paper, but there are serious impediments due to the “powerful figures” who use force, threats and intimidation to scare people from participating.

### **Thai Laws Regarding Use and Regulation of Water, a Public Resource**

The 1992 Civil and Commercial Code states that “water belongs to the State and is therefore regarded as public property.”

The Promotion of Energy Conservation Act, 1992 states that the National Committee on Energy Policy has the authority to issue any measures related to national energy, including water resources.

The Metropolitan Waterworks Act, 1967 allows private entities to construct and operate their own waterworks systems in certain areas.

The Private Irrigation Act, 1939 authorises individuals or groups of individuals to acquire and develop water resources by means of private irrigation systems.

These water-related laws and regulations provide leverage to public efforts to ensure that local people’s voices are heard when planning and operating hydropower plants.

## **EIA requirements**

The requirement for EIA in Thailand first arose in the early 90's. According to the Annex to the Ministry of Science, Technology and Environment Notification, 1992, EIA reports must provide information on, and an analysis of:

- (a) the state of the environment (physical);
- (b) the state of biotic resources;
- (c) human use values; and
- d) quality of life, including the social, health and cultural aspects.

During the EIA preparation process, consultations among relevant agencies, representatives of local communities and independent experts are required. Additional Ministerial Notifications up until 2000 state that EIAs are required for national and sub-national water development plans.

According to the 2007 Constitution, Sec. 67, "Any project or activity which may seriously affect the quality of environment shall not be permitted, unless its impact on the quality of environment have been studied and evaluated and opinions of an independent organization, consisting of representatives from private environmental organizations and from higher education institutions providing studies in the environmental field, have been obtained prior to the operation of such project or activity."

Furthermore, the EIA must include opinions of an independent organization, consisting of representatives from private environmental organizations and from higher education institutions.

These EIA provisions are quite specific, but in many cases Thailand lacks the political will or expertise to fulfill them. Further, the release of many EIAs is prevented by overzealous bureaucrats guarding their administrative turf. This prevents fully informed participation by the affected public, and must be overcome to produce effective EIAs that protect the environment while allowing sustainable development to proceed.

## **Avoiding or mitigating environmental impacts**

The 2007 Constitution also contains specific provisions aimed at protecting the environment. Constitution Section 84 states that "The state shall implement the land, natural resources, and environment policy as follows:

... (4) preparing systematic management plan for water and other natural resources for the common interests of the nation, and encouraging the public

to participate in the preservation, conservation and exploitation of natural resources and biological diversity appropriately;

(5) conducting the promotion, conservation and protection of the quality of the environment under the sustainable development principle, and controlling and eliminate pollution which may affect health and sanitary, welfare and quality of life of the public by encouraging the public, the local communities and the local governments to have participation in the determination of the measures....”

Also, according to the National Environmental Quality Act or 1992, the public can sue for damages related to pollution or environmental changes caused by state projects:

However, violence and intimidation aimed at activists and lawyers, combined with bureaucratic delays and lack of capacity, as well as bribery and kickbacks between companies and government officials, mean that these provisions lack effectiveness in many cases. For example, the noted Thai Human Rights lawyer Somchai Neelaphaijit was kidnapped in 2004 and is presumed dead due to his outspoken defense of Muslims in southern Thailand, effectively intimidating and silencing many other Thai activists and lawyers. See <http://news.bbc.co.uk/2/hi/asia-pacific/4608594.stm>.

## **Land confiscation, Compensation and Resettlement issues**

The 2007 Thai Constitution also has provisions to protect people’s rights concerning property and dwellings. Section 33 states that “A person shall enjoy the liberty of dwelling. A person is protected for his peaceful habitation in and for possession of his dwelling.” Further, Section 41 promises that “The property right of a person is protected.”

With even more detail, Section 42 states:

*“The expropriation of immovable property shall not be made except by virtue of the law specifically enacted for the purpose of public utilities, necessary national defence, exploitation of national resources, town and country planning, promotion and preservation of the quality of the environment, agricultural or industrial development, land reform, conservation of ancient monument and historic sites, or other public interests, and fair compensation shall be paid in due course....”*

The Enhancement and Conservation of National Environmental Quality Act, 1992 states that a person has the right to receive compensation in the case

of damage caused by the spread of pollution or changes in the environment arising from activities or projects initiated or sponsored by the State. The State Irrigation Act allows nationalization of land and provides for compensation for irrigation development plans.

These laws are also subject to pervasive corruption within Thailand, and legal efforts aimed at getting compensation are extremely rare and take decades. For example, Thailand recently paid 1.2 million baht to Hai Khanjantha, also known as Grandma Hai, who fought to reclaim her submerged land from the construction of Huay La Ha reservoir 32 years ago.



## 6. Vietnam

These comments regarding Vietnam's law and legal aspects of the assessment of mainstream dams on the Mekong are submitted on behalf of the Mekong Legal Advocacy Institute in Chiang Mai, Thailand. We address five core legal issues with regard to dam construction and operation: (a) Public Access to Information, (b) Public Participation, (c) Requirements for producing and enforcing Environmental Impact Assessments (EIA), (d) Preventing, avoiding or mitigating environmental impacts, and (e) Land confiscation, Compensation and Resettlement concerns.

Each of these issues has a direct impact not only on the procedural steps required for building and operating dams, but also the livelihoods of people living all along the Mekong River who depend on a thriving, free-flowing river for their very existence. Therefore, it is incumbent upon the MRC to be aware of, follow and enforce these legal provisions throughout the process of the Strategic Environmental Assessment.

### **Public Access to Information**

The Regulation on Democracy at Grassroots Level, Government Decree 79/2003/ND-CP, dated 7/7/2003, requires release of information to the public as well as participation in official decisions. Furthermore, a Draft Law on Access to Information is currently being considered. See <http://www.article19.org/pdfs/laws/vietnam-law-on-access-to-information.pdf>.

Despite these efforts, there is still considerable question about Vietnam's commitment to provide freedom of information. The 2003 arrest of Dr. Nguyen Dan Que after demanding public access to government information is still remembered, and the Decree and Draft Law still contain many loopholes that will allow the government to control information inappropriately.

### **Public Participation**

The Law on Environmental Protection states that the EIA preparation process must include comments and feedback from commune-level People's Committees (PCs) and representatives of local communities within the project area. These comments must include any opposition to project implementation

or environmental protection measures.

During the EIA appraisal process, local organizations, communities and individuals may provide comments on environmental protection issues. Furthermore, project appraisal and approval authorities then must take into account all these comments, before any conclusion or decision is reached.

Viet Nam's Agenda 21 states that for the largest projects with the greatest impact on the population, community participation in environmental impact assessment should be enhanced

The requirements for community consultation on EIA, transparency communication with community about the project and EIA outcomes are mentioned in EIA-related legal documents. However, these requirements are likely to be ambiguous and unspecified. According to some experts, the definition of community as an object of the consultation is rather insufficient – who is the community that should be consulted by the EIA related specialists, consultants, investors and local authorities? Civil organizations and associations are the bridges that connect the communities with the government's functional bodies; however regulations regarding their roles in and benefits from their participation in EIA are almost unmentioned in the laws.

During the preparation process of EIA, consultation and consideration of the community's perspectives are done on an *ad hoc* basis. Therefore, these requirements are fulfilled to different degrees, depending on each locality. In big cities such as Hanoi or Ho Chi Minh City, these requirements are strictly followed, while in contrast, these requirements are poorly followed in other localities, if followed at all, especially in poor, mountainous or low educational areas. These requirements are carefully fulfilled by foreign investment projects, such as the Phu My 2 thermoelectricity project in Ba Ria - Vung Tau province, financed by the World Bank with full participation of the project stakeholders (local authorities, relevant departments, agencies and households in the project areas) and adequate provision of information regarding the project and measures to mitigate environment pollution.

In fact, MONRE issued its Circular 05/2008/TT-BTNMT dated 08 December 2008 on guiding the strategic environment assessment, environmental impact assessment and environmental protection commitments. Article 2: Community Consultation, Chapter III – Circular 05/2008/TT-BTNMT prescribes that project owner(s) shall publicize information to the local community and organize dialogues with the project owner(s) on

main investment items, environment problems, and environment protection by sending out its official letter and ask for comments from Provincial People's Committees and the Communal Fatherland Front in the project area. These government bodies, however, may not zealously represent local people's interests.

Even though there are several legal requirements, Vietnam's courts seem to have little regard for public participation or the rule of law. Attorney Cu Huy Ha Vu filed a lawsuit against the Prime Minister for illegally approving a bauxite mine without an EIA and without approval by the National Assembly. The lawsuit was rejected on the grounds that Mr. Ha Vu is not a licensed lawyer. The Court of Appeals agreed, and rejected any future appeals as well. See [www.lookatvietnam.com/2009/07/cu-huy-ha-vu-not-a-lawyer.html](http://www.lookatvietnam.com/2009/07/cu-huy-ha-vu-not-a-lawyer.html) and <http://www.viettan.org/spip.php?article8644>.

## **EIA requirements**

Vietnam's law explicitly requires EIA, in the Law on Environmental Protection 2005. The law states that approval of the EIA report is a prerequisite for a project to get investment and operational licenses. The Environmental Protection Law also demands the supervision and inspection of compliance with environmental protection requirements set out in the EIA report as approved.

Unfortunately, as noted above, Vietnam's legal requirements to produce EIAs and share them with the public have little force when powerful politicians such as the Prime Minister want a project to happen. Rather than addressing legal issues, Vietnam's government (including courts that lack independence) will introduce imaginary and meaningless arguments. At the present, EIA reports are merely concerned with short-term and directly negative impacts on the natural environment, and give much less attention to long-term, indirect and beneficial impacts on the social environment. The recommendations and options for mitigation of the impacts are cursory, infeasible or futile, or merely a baseless promise.

EIA is essentially a systematic process to identify, predict and evaluate the negative environmental and social effects of proposed actions in order to aid decision-making regarding the significant environmental consequences of projects, to ensure that the project is not only economically sound but also socially and environmentally viable. Nevertheless, the meaning of this task is not fully understood by some managers and investors. Usually, they consider

EIA reporting to be a procedure of project preparation/implementation. Worse still, many investors “blame” the EIA requirements for hampering their investment and production activities. Therefore, when one is requested, an EIA report is prepared just for form’s sake, one more procedure among others just to make sure that the project is eligible for approval without due attention being paid to the factual environment impacts and hazards. Typical examples include the massive permissions for golf course projects in Vietnam over the last few years. If EIA reports for the projects had been prepared in a thorough and proper manner, there would not be conflicts between project owners and the local communities on the ownership and accessibility of land, forest and water resources.

## **Avoiding or mitigating environmental impacts**

Vietnam’s Law on Environmental Protection includes legally-binding measures for preventing, minimizing, and/or mitigating negative impacts of dams on rivers flowing through protected areas are directly introduced through EIAs.

Furthermore, threatened or endangered species are protected by means of various documents including:

- the Law on Forest Protection and Development 2004,
- the Law on Environmental Protection 2005,
- the Law on Fisheries, 2003,
- the Ordinance on Protection and Quarantine of Plants, 2001,
- Government Decree 175/1994/ND-CP on the Implementation of the Law on Environmental Protection.

Finally, the Penal Code provides a maximum of seven years imprisonment for the violation of regulations related to the protection of rare and wild species of animals.

In order to be effective, these provisions require vigilant enforcement by conscientious officials. The requisite awareness of consequences is sometimes lacking in Vietnam, as can be seen from the sale of endangered pangolins by wildlife authorities, encouraging even more illegal wildlife trafficking. See [http://www.panda.org/wwf\\_news/news/?153842/Seized-pangolins](http://www.panda.org/wwf_news/news/?153842/Seized-pangolins).

The MRC must also address the need to remedy existing dams prior to building new dams (Article 7 and 8 of the 1995 Mekong Agreement). There is an ongoing dispute between Cambodia and Vietnam, who have not been able to successfully resolve the cross-border impacts of Yali Falls Dam on

the Sesan River. The Cambodian government must protect its people from harm originating in Vietnam, and must also fund or staff its agency in the Cambodian MoWRM designated to work with the government of Vietnam. If Cambodia lacks the capacity and will to resolve this existing dispute, how will Vietnam's government solve multiple future disputes with Cambodia that will be on a far larger scale?

For more information, see report "Down River" by Harvard Law School's Human Rights Program, available at [http://www.law.harvard.edu/programs/hrp/documents/down\\_river.pdf](http://www.law.harvard.edu/programs/hrp/documents/down_river.pdf).

Vietnam has not lived up to the agreements made with Cambodia in the past. For example, Vietnam promised to build re-regulating dams on the Sesan and Srepok Rivers near the borders between Vietnam and Cambodia (Srepok 4A and Sesan 4A), but there are no reports about whether these re-regulating dams are being built and whether they are actually hydropower dams. (This commitment was made on January 12, 2007 at the Cambodia-Vietnam Stakeholders Meeting on the Srepok EIA report at Sunway Hotel, Phnom Penh).

## **Land confiscation, Compensation and Resettlement issues**

Like its neighbors, Vietnam has years of experience in relocating people for development projects, as well as writing laws to regulate the practice. Accordingly, when land is requisitioned by the State, affected persons should be compensated and assisted in resettlement, according to the Constitution of 1992, the Water Resources Law of 1998 and the Land Law, 2003. Further regulations regarding compensation include:

- Decree 181/2004/ND-CP on Land Law implementation
- Ministry of Finance Circular 116/2004/TT-BTC
- Decree 197/2004/ND-CP on compensation, support and resettlement when land is taken back by the State;
- Decree 17/2006/ND-CP dated 27/01/2006 on revision of previously issued Decrees on Land Law implementation and Decree 187/2004/ND-CP on equitization of State-owned enterprises
- Law on Environmental Protection: adverse impacts on the environment require compensation.

Unfortunately, Vietnam's previous efforts at resettling people for dam construction have been fraught with difficulties. For example, thousands of

ethnic minorities have been forced to move for the Son La Dam on the Da River, but their previous occupation as wetland rice farmers leaves them unprepared for mountaintop agriculture forced upon them by relocation. Monetary compensation is completely inadequate to rebuild their homes, and delays in the process are leaving thousands in abject poverty. See [http://www.monstersandcritics.com/news/asiapacific/news/article\\_1471157.php/Vietnam\\_admits\\_dam\\_resettlement\\_programmes\\_inadequate](http://www.monstersandcritics.com/news/asiapacific/news/article_1471157.php/Vietnam_admits_dam_resettlement_programmes_inadequate).

# Regional Message from MLAI and Samreth on Mekong Mainstream Dams

Every Mekong country has its own legal and political systems. These systems vary widely, some work to protect economic interests at the expense of others, while some countries attempt to seek a balance between economics, environment and local people's livelihoods. Some have laws that provide access to information and seek public participation, while other countries shun or even suppress the voices of their citizens.

Each Mekong mainstream dam will have an impact on the environment and people far beyond the borders of the country where it is built. Given the patchwork of laws and policies that will be used to regulate these impacts, it is impossible to reconcile harm to local people's livelihoods, including food security, water supply, and transportation, with the economic benefits that will accrue to urban people who will use the power.

Therefore, we urge the adoption of standardized laws, policies and procedures that control watershed planning, protect aquatic ecosystems and water resources, regulate dam construction, relocation and compensation, and address the wide range other issues surrounding dam construction across the Mekong Region, before the livelihoods of millions of people are irretrievably damaged.

This will involve two levels of action. First, individual governments need to harmonize their own legal regimes across all sectors, in order to balance competing interests while protecting the environment and local livelihoods. Second, governments throughout the region must harmonize their legal regimes governing water resources across borders to provide uniform policies and procedures to all people affected by Mekong dams.

One example of countries adopting a duty to perform EIAs for projects with impacts that cross borders is the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo, 1991). See <http://www.unece.org/env/eia/>. Of particular interest to Southeast Asia are the strong guidelines for public participation. These guidelines recognize multiple benefits, such as:

- Improved relations between peoples and countries, and prevention of transboundary environmental conflicts

- Development of civil society and democracy in the countries of the ECE region
- Promotion of timely disclosure of relevant information to participants in the environmental decision-making process
- Making people understand and respect the final decisions on projects
- Giving insight into environmental protection and long-term environmental problems. (<http://www.unece.org/env/eia/about/publicpart.html>.)

In order for the governments of the Mekong Region to ensure a robust future for all their inhabitants, it is essential that they commit to comprehensive and transparent SEA and EIA processes. This is in addition to the need for timely, multidisciplinary EIAs, adherence to rule of law, and provision of fair, adequate compensation for confiscated property and lost livelihoods.



# A Note on Sources

Most legal authorities herein have been extracted from Mekong Region Water Resources Decision-making: National Policy and Legal Frameworks vis-à-vis World Commission on Dams Strategic Priorities, IUCN (2006), Available online at [http://cmsdata.iucn.org/downloads/mekong\\_region\\_water\\_resources\\_decision\\_making.pdf](http://cmsdata.iucn.org/downloads/mekong_region_water_resources_decision_making.pdf).

The 2007 Constitution of Thailand can be found at <http://www.asianlii.org/th/legis/const/2007/1.html>.

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