

Large Hydropower Projects in Ethnic Areas in Myanmar: Placing Community Participation and Gender Central to Decision-Making

Key words:

Hydropower
Myanmar
Gender
Community
Participation

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September 2017

Policy Pointers

Prior to considering permission for extractive projects with potential negative impacts, adopt clear investment policy seeking public opinions with an emphasis on gender inclusion and community involvement

Creation of gender-sensitive community participation guidelines in order to actively engage local populations

Community involvement in the Monitoring and Evaluation stages of development projects

Institutionalization of the Free Prior and Informed Consent (FPIC) process in ethnic areas with special attention to gender inclusion

Special attention paid to ensuring the protection of human rights within development projects in conflict areas



Wan Hsala village taken from the other side of the Salween River (Credit: Mon Pan Youth Group)

Until recent times, due to a lack of transparency, accountability and community participation, large scale hydropower dams in resource rich, ethnic areas rarely benefited the local people, instead having negative impacts on their livelihoods and the environment. Existing studies have indicated that dam projects in ethnic areas are associated with human rights violations and increasing the risk of triggering conflict in such sensitive areas. In most cases, disadvantaged groups such as women and children are usually the ones mostly affected. Given the historical and traditional lack of women's participation in public affairs, especially in ethnic areas, women's voices are rarely heard and mostly excluded from the development process that directly affects their lives.

In most cases, project developers acquire permits or licenses from the government without proper and meaningful consultation with the affected communities and stakeholders concerned. As a result, these projects have faced local opposition due to their adverse impacts to the community and to the environment as well. Civil society organizations (CSOs) and the local community have organized campaigns against such projects and demand for more transparency and accountability. One such case is the proposed large-scale Mong Ton Dam project on the Salween River in southern Shan State.

Existing Legal Framework on Investment and Community Participation with a Focus on Gender

Regarding equal participation between men and women, there is still no legal framework in Myanmar. However, as a member of UN, Myanmar is committed to the United Nations Guiding Principles on Business and Human Rights (the "UN Guiding Principles"), proposed by the UN Special Representative on Business and Human Rights, John Ruggie, and endorsed by the UN Human Rights Council in June 2011. According to Pillar 1 on the State's duty to protect, the State has a responsibility to enact and implement laws and regulations to protect women and men from the negative impacts of any business. Specifically regarding participation of affected local communities, with focus on incorporating and considering gender, some international commitments the government has made together with the existing domestic legal framework can be applied.

Myanmar has voted in favour of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) that was adopted by the UN General Assembly in September 2007. Articles 10, 11, 19, 28 and 32 of UNDRIP provide basic provisions relating to 'free, prior, informed consent' (FPIC). FPIC is a consultation and consent standard that applies specifically to indigenous peoples and is a means of effectuating indigenous peoples' rights (MCRB 2016). This includes the rights to: property; culture; religion; non-discrimination in relation to lands, territories, and natural resources; health; and pursuing their own priorities for development, including of natural resources, as part of their fundamental right to self-determination. Articles 22 (1 and 2) particularly focus on women, youth, children, elders and persons with disabilities in implementing UNDRIP and protects and guarantees against all forms of violence and discrimination. In other words, women's participation in FPIC process is guaranteed.

However, Myanmar has yet to fully incorporate provisions on UNDRIP in the domestic legal framework. The FPIC concept is thinly included in Article 5 of the Rights of Protection of Ethnic Nationalities 2015 that concerns development projects including extracting natural resources from ethnic areas.

It spells out that ethnic people are required to be adequately informed in advance prior to the project and have the right to participate in discussion and negotiation. However, it is not yet clear on how this provision will be applied in practice and how it will ensure often marginalized groups such as women will be included.



Traditional homes in Wan Hsala village (Credit: Hnin Wut Yee)

Article 7 of the Myanmar Environmental Impact Assessment (EIA) procedures enacted in December 2015 requires projects that include involuntary resettlement or projects that have potential negative impacts on ethnic people to adhere to international good practices including the International Finance Corporation performance standards (IFC PS). IFC PS 7 specifically focuses on protection of Indigenous Peoples rights from the activities of businesses. Gender, human rights and water are among the cross-cutting topics of IFC PS. Nonetheless, clear guidelines are needed on how to implement such requirements effectively.

Most importantly, the 2017 Myanmar Investment Rules which have been recently enacted says in its article 61 that "where the Investment may be subject to the Law on the Rights of Protection of Ethnic Nationalities 2015, the Myanmar Investment Commission will consider any specific consultations that may be required with the relevant State or Regional Government or other stakeholders as part of the assessment process or in connection with any conditions to be included in the Permit." This provision paves the way to apply FPIC principle by spelling out the FPIC process and procedures in the bylaw of the Ethnic Rights Protection Law 2015, which is currently being drafted. FPIC can be adopted prior to consideration of mega extractive projects that can have negative impact on the environment and ethnic people.

FPIC will enable voices of affected community and stakeholders concerned to be taken into consideration in making strategic decision on whether the project should proceed, or even to carry out an EIA.

Myanmar has adopted the National Strategic Plan for the Advancement of Women (2013–2022) based on the 12 priority areas of the Beijing Platform for Action, 1995. Myanmar has also adopted the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). CEDAW states that "...the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields". Article 4 and 7 set out strategies for the promotion of women's participation in decision making. One of the top priority areas of the National Strategic Plan for the Advancement of Women is also to "ensure women's equal participation in decision making and leadership at all levels of society."

Article 67 of Part VIII of the land use policy enacted in 2016 also guarantees women's participation in decision making processes related to land tenure rights issues. Part IX also provides equal rights of men and women in terms of land tenure and also in participating and representing the community regarding various land related issues.

Although there is no legal framework in Myanmar regarding businesses that operate or will be operating in conflict sensitive areas, UNGP Guideline 7 can be applied within this context. This spells out guidance on how businesses need to respect human rights in conflict affected areas and how states are required to put stringent actions and necessary support to such businesses to be able to avoid potential gross human rights violations in such areas.

Why is community involvement with a focus on gender important in making investment decisions, including on the Salween River?

Before any strategic decision on investment is made at the national level, it is crucial to seek the view of the affected community and stakeholders concerned specifically in ethnic areas.

Without gaining a "social license" through the acceptance of affected communities, licenses received from the government alone are not adequate even for carrying out EIA assessment let alone in actual implementation.

If large-scale dams are built on the Salween River, the irregular hydrological regime will cause major downstream environmental and socio-economic impacts on its riverine communities. Among other things, this includes impacts on downstream riverine vegetation, birds and various aquatic life forms whose lifecycles are dependent on the natural flow of the river, reduction in the amount of silt alluvial land and erosion of farmland, restricted or lack of access to forest by villagers due to flooding or restriction by security forces due to security reasons and dry and rainy season flooding, and reduction of water quantity and quality.

While the loss and suffering of the resettled people in the upstream area and the need for incorporating social justice is visible, it is often the case that people in the downstream areas affected by the large-scale dam are forgotten and are not compensated for the loss incurred. In both upstream and downstream areas, women tend to be more impacted than men. In the rural ethnic community setting, although both men and women are vulnerable to poverty and lack of health care or educational facilities, men tend to be more influential in terms of control over resources such as land and labour that requires physical strength and stamina like ploughing and cutting wood. However, women also carry a heavy burden, oftentimes even more so than men, since they not only take care of home but are also involved in farming and gardening.

Based on recent research findings in two villages to be affected by the proposed Mong Ton Dam in southern Shan State, women are the ones who take care of the household chores including making food, child care and they have to take the burden of collecting clean and adequate water (Yee, 2016).¹ Reduction in water quality and quantity leads to a stressful situation for women and potential impacts on their health and wellbeing, especially for pregnant women's health. In Wan Hsala, villagers rely mainly on shifting cultivation; gardening on silt alluvial land along the Salween River bank, and collecting valuable forest products including medicinal plants, fruits and vegetables.

Home gardening is mainly done by women for domestic consumption and for sale. If, due to the proposed dam, those plantations are flooded or cannot be supplied with an adequate amount of water, women will lose their economic activity and food security. Another main economic activity of women is catching edible insects like Hemiptera and Cocopache (a relative of the common cockroach) on the seasonally flooded land that will also be affected.

Given historic and traditional lack of opportunities in education and exposure to the outside world, women here often lack the self confidence in their own abilities and knowledge to actively participate in village meetings that include decision making on community affairs such as water resource management. Instead, they rather take a leading role in their traditional realm, for example of cooking for donation ceremonies at village monasteries. It is more the case for middle aged and elder women, since nowadays young women are gaining more access to educational opportunities compared to the older generations, albeit still facing various constraints.



Women's focus group discussion (Credit: Hnin Wut Yee)

Civil conflict, where there is a lack of security and peace, inhibits women's development, access to education and quality health care and participation. Such circumstances are found in the case of Mong Ton Dam project. If this linkage is not taken into consideration in the development and planning of projects, women will be left behind from any development process, and instead will be more affected by potential negative impacts. Without paying special attention to the needs and aspirations of ethnic women, the objectives of the National Strategic Plan for the Advancement of Women will not be fulfilled and a vicious circle of poverty, discrimination and social injustice will remain.

To encourage more women's participation in making decisions that have an impact on their lives, barriers must be removed and legal and institutional measures to protect women's rights to participation must be adopted. Concrete actions need to be taken as follows:

Actions to be taken:

- ❑ The government must clearly spell out its policy on investment that seeks public opinions with a focus on gender before strategic decisions are made at national level on extractive projects including large-scale dam projects that have potential negative impacts on the environment and people's livelihoods. It needs to be done even prior to the stage of EIA process.
- ❑ The government must develop a clear guideline on meaningful public participation with a focus on gender to ensure local people can participate in development projects that have an impact on their lives. Currently the government is drafting a public participation guideline on EIA and it needs to be gender-sensitive and implemented effectively.
- ❑ Meaningful community participation must also be ensured in monitoring and evaluation of the project implementation including the Environmental Management Plan (EMP), as well as the establishment of a credible Grievance Mechanism, and sharing of project benefits with the local community, such as community investment projects.
- ❑ The government must institutionalize the application of the FPIC process in ethnic areas via relevant laws and policies, such as the by-law of the Ethnic Rights Protection law, investment regulations, the EIA public participation guideline, and national land law.
- ❑ The government must ensure mainstreaming women's participation in every process, and link up with other programs and activities at state and regional level that develop women's capacity. This should include support for various activities and programs of Civil Society Organizations and Non-Government Organizations that remove barriers to women's participation in public affairs.

- ❑ The government must put more stringent measures in development projects and business operations implemented in conflict affected areas by requiring the company concerned to adhere to domestic policy, laws and regulations and international best practices to prevent human rights violations.
- ❑ On large hydropower dams specifically, the government must clearly state its policy on existing planned projects on the Ayeyarwaddy River and Salween River. This includes reviewing them with the participation of all stakeholders concerned in a transparent and accountable manner. This process should ensure that local women's voices are taken into consideration. To find the alternative solutions for the energy needs of the country, which are also gender-sensitive, multi-stakeholder forums on 'accessible energy for all' should be convened by adopting the principles of social justice, gender equity, human rights protection and non-discrimination.

Knowledge Products

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This research was produced under the project "Professional Development of Water Governance and Regional Development Practitioners in the Salween Basin (MK31) with support from Australian Aid, and the CGIAR Research Program on Water, Land and Ecosystems: Greater Mekong.

¹ For more information on the subjects discussed in this brief, please visit the *Mekong, Salween and Red Rivers: Sharing Knowledge and Perspectives Across Borders* [international conference proceedings](#).

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