

"Rights and Rites:" Approaching the Issue of Justice for the Salween River

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Policy Pointers

Recommend suspension of large-scale hydropower dam projects on the Salween River until formal peace agreements are reached.

Recognition of traditional and customary land practices of indigenous people by the Union government

Local communities recognized as key stakeholders in decision making and implementation processes for development projects

Reform of current national laws and regulations based on the principles of freedom, equal rights and self-determination, strictly adhered to by all stakeholders in development projects



Villager crossing the Salween to Kaw Ku Island near Hpa-an town in Karen State (Credit: Saw John Bright)

The Salween River is valuable for the livelihoods and culture of millions of ethnic people living along it. Hatgyi Dam is one of the five dams that is planned to be built in Karen State, Myanmar. Situated in an armed conflict area, the dam is not only challenging the livelihoods and culture of the local people but is also being seriously affected by decades of violent conflict resulting in human rights violations and mass displacement of civilians. There are questions of community involvement in the decision-making processes regarding the dam project, and therefore a constructive response is needed for justice in water governance on the Salween River. Drawing from recent research on the Hatgyi Dam, this policy brief applies the concepts of "Rights" and "Rites" to examine community expectations and decision-making processes towards the project. The "Rights-Based Approach" is a formalized and legalistic approach normally recognized by the state, while the "Rites-Based Approach" is a locally defined natural resource management approach which is centered around cultural norms and local knowledge. The objective is to show how both approaches of "Rights and Rites" could help contribute towards inclusive decision-making and address concerns about injustice. The issue of justice is not yet fully considered in the current development policy agenda for water governance in Myanmar, and decision-making over the Salween dams to date has been highly centralized without community participation. Within the opportunities provided by Myanmar's current political context, "Rights" and "Rites" approaches towards water governance policy in Myanmar could contribute positively towards inclusive decision-making in order to address the issue of justice in water governance for the Salween River.



Kaw Ku Island in the Salween River near Hpa-an town, Karen State (Credit: Saw John Bright)

Introduction

How decision-making can be better informed is a critical question to address justice in issues of water governance towards the Salween River. Researchers of mainland Southeast Asia on water issues have begun to address the concept of justice in water governance by arguing that there is a need to identify winners and losers in the decision-making process (Wouters & Kang, 2013); Middleton and Pritchard, 2016). From the perspective of a legalistic and state-recognized resource management approach ("rights"), to date limited attention has been paid to local practices and how they relate to justice, and thus they are not adequately reflected in policy towards the water sector in Myanmar, including decision-making on the Salween dams which has been highly centralized.

Existing laws and many of the policies (for example, the National Land Use Policy, January 2016) are developed under the guidance of the 2008 Constitution without wide-spread ethnic community support. The implications of the as-of-yet unconcluded peace process thus cannot be incorporated, including on decentralization and revenue sharing of natural resources that ethnic nationalities are making claim to (PRIO, 2012). Myanmar is yet to have clear policies, legal mechanisms and institutions on trans-boundary and conflict sensitive water disputes, such as in the Salween River. The Myanmar National Water Policy 2014, authored by expert group of the National Water Resources Committee, does not clearly mention how the policy will be addressing conflict sensitivity and trans-boundary issues.

Development projects are closely linked to the peace process and human rights abuses in ethnic areas in Myanmar. According to a Karen Peace Support Network (KPSN) statement in July 2015, the attempts to push ahead with large-scale

development projects, including large hydropower dams, is obstructing the peace negotiations between the Karen National Union (KNU) and the Myanmar military (KPSN, 2015).¹ For over 60 years, the KNU as well as many other ethnic groups have been in conflict with the Myanmar military demanding the right to self-determination and to govern their own natural resources (Simpson, 2013; Bauer et al. 2016). The establishment of the Myanmar Peace Center during the U Thein Sein government, despite its limitations, revealed efforts between the Union government and ethnic armed organizations to directly and indirectly address the issue of resource governance through political dialogues on peace and federalism, including on decentralization of natural resource governance. However, problems remain given the fighting in ethnic areas and the fragile peace process, including around the Hatgyi dam area (Nyein, 2017). The recent 21st Century Panlong Peace Conference, initiated by the newly elected civilian government in 2016, is not consistent with ethnic people's expectations for the right to self-determination.

Both during the period of conflict, and during the ceasefire, the central Myanmar government has tried to advance plans for dams on the Salween River (International River, 2013). According to the NGO network Karen Rivers Watch (KRW) in its report in 2014, it was stated that from 26 September to 17 October 2014, at least six different incidents of fighting occurred between the Myanmar Army (Tatmadaw) (together with the Border Guard Force or BGF) and the Democratic Karen Benevolent Army (DKBA) in Hpa-an District and Hpapun District (KRW, 2014).^{2,3} In 2016, another report came out and again concluded that these clashes were linked to the Hatgyi Dam as the Tatmadaw has been seeking to control access to the dam site (KRW 2016).



Map of Salween Proposed Salween Dams (Source: International Rivers)

The issues of Rights and case studies of Rites

The Myanmar government's development policies and mechanisms remain controversial from the perspective of a "rights-based" approach. According to Myanmar Energy Master Plan (December 2015) supported by the Asian Development Bank (ADB), there will be a push for hydropower dams, which are controversial including for their local impacts. Frameworks or mechanisms such as the Strategic Environmental Assessment introduced by the International Finance Corporation (IFC) of the World Bank Group to deal with development issues are also not clear on how to address key issues including peace and conflict impact assessment in the Salween (IFC, 2016). In June 8, 2017, a draft SEA baseline report on hydropower was published by the International Centre for Environmental Management (ICEM) on its website for public comments (ICEM, 2017).⁴

Burma Rivers Network and Save the Salween Network, released a [statement](#) in January 27, 2017 raising serious concerns about SEA and strongly opposing the International Finance Corporation's (IFC) planned promotional workshops in Yangon, Myitkyina and Loikaw, beginning on January 27, 2017. The statement mentioned that BRN and SSN oppose any attempts to push ahead with large dams while conflict continue along Burma's major rivers, where Burma Army offensives and systematic abuses have displaced hundreds of thousands, and where ethnic peoples continue to be constitutionally denied their right to decide over natural resources in their homelands. It was also stated that the establishment of a genuine and durable "Union Peace Accord" protected within the federal constitution must precede Strategic Environmental Assessments for the hydropower sector (BRN and SSN, 2017).



Villager fishing in Dawla Lake near Mikayin Village in Hpa-an, Karen State (Source: Saw John Bright)



Villager Crossing through the Salween to Kaw Ku Island near Hpa-an, Karen State (Source: Saw John Bright)

The Environmental Impact Assessment (EIA) procedure, approved by the Cabinet in November 2015, was drafted with support from the ADB and although it claimed to be based on guidelines from the IFC, it also fails to cover complaint mechanisms and has poorly recognized the right for community as it does not mention about 'Free, Prior and Informed Consent' (FPIC) as a community right in itself.⁵ The existing decision-making process has neglected the role of local community in managing natural resources. The Save the Salween Network (SSN), a civil society network in Myanmar, has been claiming that the Salween is the lifeblood of local people providing livelihood opportunities and cultural identity. The SSN in its February 22, 2016 statement writes that the Salween issue is mainly about environmental injustice for ethnic communities (SSN, 2016).^{6,7}

As an alternative, there are opportunities for using a "rites-based" perspective, which is a locally defined resource management approach, and can be used by the local community to have recognized the value of traditional knowledge systems. The case studies of Kaw Ku Island and Dawla Lake have shown that there are strong "rites-based" practices within the community that links the Salween River to community livelihoods.⁸ Villages in this area of the lower Salween River Basin in Karen state use traditional systems for governing and using the valuable, seasonally-changing natural resource base. For example, a village leader from Mikayin, stated: "We know exactly where our natural resources are and how to manage them sustainably and equally among our villages. We have been managing traditionally to live in harmony with our resources since our ancestors" (Interview, 12 November 2015). The connected ecosystems of the Salween River and Dawla lake and Kaw Ku Island are considered critical to the people's livelihoods.

In the report "Accessible Alternatives," the Burma Environmental Working Group used other case studies in ethnic areas to point out that ethnic communities have their own systems of natural resource management that both support their lives and the sustainability of resources (BEWG, 2009).⁹ Another report titled "Our Customary Lands" recently launched in July 2016 by Ethnic Community Development Forum demonstrated with cases drawn from seven customary land management systems in six ethnic communities that ethnic customary land management systems needed to be protected and recognized by a new federal constitution and decentralized legal framework (ECDF, 2016).



Mikayin Village with a small Pagoda by the Salween River (Credit: Saw John Bright)

The National League for Democracy (NLD) national government should pay more attention in dealing with the roots of internal armed conflict, as promised in its election manifesto. The rush towards foreign investment and development projects in conflict affected areas without considering justice in resource governance could lead to a political deadlock in the peace process if resource governance issues cannot be solved with ethnic people themselves. International actors and investors should also pay serious attention on these challenges over justice in water governance.

Policy Recommendations

It is important that stakeholders involved in the Salween River hydropower projects understand the dynamics of conflict. Approaches towards development issues should reflect perspectives from both "rights" and "rites" to ensure justice in water governance in Myanmar. The policy recommendations to the government and relevant actors are:

1. The Myanmar government should call for a moratorium of all of large-scale development projects, including Hatgyi Dam, in Karen state and other ethnic areas in support of a peace process as the projects are currently in contravention of union-level ceasefire agreements and a number of UN Guiding Principles, including the UN Guiding Principles on Business and Human Rights, UN Declaration on the Rights of Indigenous People (UNDRIP);
2. The issue of decentralization of resource governance should be taken into account in accordance with the 21st Century Panlong Peace Conference's commitment to establish a genuine federal democratic union based on the principles of freedom, equal rights and self-determination;
3. The Myanmar government should recognize the customary land and water practices in their legal mechanisms and demonstrate respect for the practices and beliefs of indigenous persons in the country;
4. Other relevant policy actors (academic researchers, private sector, financial institutions and international NGOs) should engage in meaningful policy and institutional reforms that are in line with the political aspirations towards democratic federal union in Myanmar;
5. Local communities must be recognized as one of the key policy actors in any development plan or projects, consistent with the rights for FPIC (Free Prior Inform and Consent).



A boat on the Salween River heading toward a small pagoda on Milkayin Mountain (Credit: Saw John Bright)

Actions to be taken:

- ❑ Build a broad-based awareness about the conflict dynamics in Myanmar, including the root causes of the problems and the perspectives of ethnic communities. This should inform processes of water governance and the interaction amongst policy actors involved directly and indirectly in the Salween Dams.
- ❑ Ensure efficient use of existing regional policy dialogue platforms such as Water, Land and Ecosystem Forum to discuss, debate and evaluate the different knowledge products being produced by ongoing research initiatives.
- ❑ Inclusive national level policy institutions should be encouraged to support policy development on the Salween River's governance, with consideration of justice, peace and sustainable development.
- ❑ More community research initiatives should be encouraged, where everyone in the community can participate and discuss the issue of conflict sensitive projects like Salween hydropower projects.
- ❑ More attention is also needed to be paid in the mainstreaming of gender equality to ensure that different groups of community members, especially women, can play an equal role in engaging with the policy platforms and community initiatives.
- ❑ Private sector and civil society must push forward efforts to enable water governance mechanisms that meet international human rights standards and respect the rights of the community to participate in decision making processes.



Environmental outreach program (Credit: KESAN)

Millions of ethnic people are living along the Salween River who depend primarily on water-related resources for their livelihoods. The Salween River is also a symbol of cultural identity since their way of life is interdependent on the river basin ecosystem. From the perspective of water justice, as discussed in this policy brief, "rights" and "rites" are interconnected. Government policies and legal mechanisms in Myanmar do not yet fully reflect human rights-based approaches. In conclusion, I argue that there is an opportunity in Myanmar to work with both the perspectives of "rights" and "rites" approaches in water governance policy development, which could reflect a positive response towards inclusive decision-making in order to address the issues of justice on the Salween River.*

*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](#).

¹ Karen Peace Support Network (KPSN) is the largest network of Karen civil society organizations in Burma. Its member organizations have been providing support for vulnerable people and communities in this conflict-torn region for decades, striving to empower local communities, build transparent and accountable institutions, and help create a sustainable peace in Burma.

² Karen Rivers Watch (KRW) was established in 2003 in response to the needs for a stronger network of civil society organizations working on environment, women, youth, human rights and development issues to emerge in order to monitor several large dams on the lower stretch of Salween River in early 2000s.

³ The DKBA Democratic Karen Benevolent Army (also known as the Democratic Karen Buddhist Army) is a splinter group from the KNU that controls most of the Hatgyi Dam areas, and used to be aligned with the Tatmadaw. But after the November 7, 2010 election, which the DKBA considered to be unfair, the DKBA opposed it and has since not aligned with the Tatmadaw.

⁴ ICEM is contracted by IFC to do SEA baseline report (<http://icem.com.au/portfolio-items/developing-a-strategic-environmental-assessment-sea-of-the-hydropower-sector-in-myanmar/>)

⁵ MOECA Myanmar EIA Procedure - December 29, 2015

⁶ Save the Salween Network is a campaign network of both local communities from Salween River Basin and community based organizations who work on environmental justice issues across the country.

⁷ Environmental Injustice can be understood as distributional justice; procedural justice; and recognition justice

⁸ The case studies were presented in a paper titled (Rights and Rites for Water Justice: A Case Study of the Proposed Hatgyi Dam on the Salween River) by the author in International Conference on the Mekong, Salween and Red Rivers: Sharing Knowledge and Perspectives Across Borders | Faculty of Political Science, Chulalongkorn University | 12th November 2016

⁹ The case studies report about external threats on local knowledge on resource management and livelihood systems from Arakan, Kachin, Karen and Lahu communities. It indicates how militarization and development projects in these areas have negatively affected local natural resource management systems.

Knowledge Products

The Center for Social Development Studies (CSDS) is within the Faculty of Political Science, Chulalongkorn University. We produce interdisciplinary critical research on social development in Southeast Asia, engages in policy-making through building partnerships, and provides a public forum for debating critical issues.

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