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GENDER AND HYDROPOWER NATIONAL POLICY ASSESSMENT MYANMAR



Australian Government

Department of Foreign Affairs and Trade




OXFAM

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May 2015

Acknowledgment

This report has benefitted from inputs and comments from Jasmine Burnley, Poe Ei Phyu, Pauline Taylor McKeown, Michael Simon and Gary Lee.

This report was commissioned by Oxfam Australia as part of its Balancing the Scales — Gender Justice in Hydropower project, originally commissioned for the Challenge Program on Water and Food MK 13 project, now supported under the Oxfam Mekong Inclusion Project.

 Printed on ecoStar, an unbleached coated paper made from 100% recycled post-consumer waste using vegetable based inks.



Australian Government
Department of Foreign Affairs and Trade



This initiative is an Australian aid project, funded by the Australian Department of Foreign Affairs and Trade.

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MYANMAR COUNTRY REPORT

The rivers of the world are coming under increasing pressure to provide for growing populations and economic development. At the same time, river management and water governance are becoming ever more politicised, as development frequently redistributes the benefits of water from riparian dwellers. Hydropower is an example of development that benefits some at the expense of others, and gender is one such variable that is often overlooked. This country report reviews national policies relevant to hydropower developments, focusing particularly on the nexus of gender and hydropower investments.

GENDER AND HYDROPOWER IN MYANMAR TODAY

Myanmar has one of the lowest electrification rates in Asia, less than a third of the population has access to the electricity grid (World Bank 2014). A drastic rural-urban divide exists in access to electricity: while 75% of the population in major cities in Myanmar enjoys access to electricity, rural areas only have an electrification rate of 16% (Ibid., p.41). The country relies heavily upon hydropower to generate about 75% of its electricity. The combined hydropower potential of Myanmar's four largest rivers — the Salween, the Irrawaddy, the Chindwin and the Sittaung — totals 100,000 megawatts, of which less than 10% has been harnessed. The Myanmar Government has identified 92 potential dam projects to harness up to 50% of the country's hydropower potential (Asian Development Bank 2012, and International Finance Corporation 2015).

There are more than 135 ethnicities in Myanmar. Burmans make up about two-thirds of the total population. The seven largest ethnic minorities are Kachin, Kayah (Karenni), Kayin (Karen), Chin, Mon, Rakhine (Arakan) and Shan, each with a state. Ethnic states make up 57% of the country's land mass (Transnational Institute 2013). Unlike the other three main rivers with immense hydropower potential, the transboundary Salween river flows entirely within ethnic minority states — Shan, Kayah, Kayin and Mon State. Although the Chindwin and Irrawaddy rivers originate in Kachin State, the rivers primarily flow through predominately Burman regions; the Sittaung river flows only within the Bago region.

In Myanmar, women face entrenched inequality and systemic barriers to economic, political and social leadership (Oxfam et al 2013). Women are largely responsible for caring for children, sourcing and collecting water and firewood, as well as managing households and preparing meals. Although women's household chores are invariably linked to the natural environment, in many societies they have little decision making power in water and natural resource management. Women's roles and representation in institutions, political parties and governance is often secondary to that of men (Asia Foundation 2014). In the context of consultations with local affected communities for large-scale development and infrastructure projects, while women's participation may be facilitated, religious leaders, village elders or leaders of community-based organisations are likely to be predominantly male (Ibid., p.35).



Unlike other countries in the Mekong region, numerous hydropower dams are constructed or slated for construction in conflict, cease-fire, or fragile post-conflict zones in ethnic minority states, which Non-State Authorities as well as the Government of Myanmar are involved in controlling. In the context of post-conflict development, communities in the project area of infrastructure development are especially vulnerable to perpetrations of forcible relocation and seizure of assets, namely land and water (Ruggie 2011). In the past, increased militarisation and conflict, in part spurred by hydropower projects (Karen Rivers Watch 2014), has spurred a litany of human rights abuses. It has also been asserted that sexual violence is commonly used by both state and non state armed actors. More than 100 cases of sexual and gender based violence against ethnic minority women perpetrated by Burmese soldiers have been documented in recent years (Women's League of Myanmar, 2014).¹

Against the backdrop of the gendered impact of hydropower projects and the intersectional challenges faced by rural, indigenous women, this report reviews the legal and regulatory framework for the hydropower industry in Myanmar and assesses the degree to which gender considerations are addressed in this framework. The method of research has been a wide-ranging desk review of current national policies and legislation which falls into two categories. The first category includes laws and policies specifically designed to guide hydropower development in the country, and these documents have been examined for clauses which support gender justice in projects. The second are other policies and legislation which include relevant commitments to gender equity or women's rights which could be assumed to remain applicable in the context of hydropower development. The report begins with international agreements or tools that address gender justice and hydropower development. It should be noted that government agencies and structures have not been consulted in the research.

INTERNATIONAL AGREEMENTS AND ASSESSMENT TOOLS

Myanmar has ratified or acceded to the following international protocols which recognise the importance of gender equity:

- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Adopted on 18 December 1979. Acceded 22 July 1997
- Fourth World Conference on Women, Beijing Declaration (1995).
- United Nations Declaration on the Rights of Indigenous Peoples (voted in favour at the UN General Assembly, 13 September 2007).
- The Government of Myanmar has also agreed a National Plan for the Advancement of Women as part of their commitment to enshrine CEDAW in national legislation — see national policy framework on page 5 of this report.

A variety of international tools exist to assist in the assessment and planning of hydropower projects, which recognise gender differentiated impacts to varying degrees:

- The 2011 Hydropower Sustainability Assessment Protocol is an industry tool which considers gender as a cross-cutting issue at all stages of hydropower development and operation. It does not, however, provide guidelines for rigorous gender impact assessment, mitigation or monitoring; and the protocol is developed for application to individual project assessment rather than basin or cumulative assessments.
- The Rapid Basin-wide Hydropower Sustainability Assessment Tool (RSAT) was developed in 2010 for application in the Mekong region by USAID, the Mekong River Commission, the World Wide Fund for Nature and the Asian Development Bank. The tool notes that there should be "particular attention" to vulnerable groups including women, female-headed households, indigenous peoples and those without legal title to land, but does not include guidelines on considering gender differentiated impacts. This tool is for rapid assessment of impacts at basin scale.
- In 2009, The Mekong River Commission produced a document entitled "Preliminary Design Guidance for Proposed Mainstream Dams in the Lower Mekong Basin". The guidelines encourage consideration of the livelihood and social impacts of dams, but do not raise gender as an issue for special attention.
- The Mekong River Commission's "Knowledge Base on Benefit Sharing", produced in 2011 as part of its Initiative on Sustainable Hydropower, can be used by governments looking to use hydropower investments to fuel local and regional development. It does not mention gender as a consideration.
- The World Commission on Dams Final Report (2000) recommended the integration of gender justice into hydropower development through special attention for women as recipients of legal and project information, and the inclusion of women's perspectives in the consultation phase.
- As a member of the World Bank and the Asian Development Bank (ADB), Myanmar is committed to meeting the provisions in the two banks' Social Safeguard Policies, both of which include specific policies on gender and indigenous people, which are also recognised in the performance standards of the International Finance Corporation (IFC). The ADB also produces sector specific gender checklists — but not for hydropower.
- The IFC, a member of the World Bank Group, has begun to work with the government of Myanmar on environmental and social guidance around hydropower projects. In January 2015 the IFC convened a workshop in Naypyitaw, Myanmar, where social issues, including gender, were identified as important and currently inadequately addressed in hydropower policy and development.

NATIONAL POLICY FRAMEWORK

NATIONAL CONSTITUTION

The 2008 Myanmar Constitution prohibits discrimination of women:

- Article 348 prohibits discrimination of Burmese citizens, based on race, birth, religion, official position, status, culture, sex and wealth.
- The Constitution also includes similar anti-discrimination clauses with regards to civil service personnel (Article 352) and education (Article 368).
- Article 350 stipulates that women shall be entitled to the same rights and salaries as that received by men in respect of similar work.
- Article 351 states that mothers, children and expectant women shall enjoy equal rights as prescribed by law.

PROTECTION, RIGHTS, AND DEVELOPMENT OF WOMEN

- There is no legislation dedicated to gender or women's issues. The Ministry of Social Welfare, Relief and Resettlement takes the lead within the Myanmar government in policies to enhance protection of women's human rights. The ministry is in the process of drafting the Anti-Violence Against Women Law, which will be Myanmar's first law to protect women from all forms of violence; the law is expected to be enacted by the end of 2015.
- The National Strategic Plan for the Advancement of Women (NSPAW) (2013-2022) launched by the Myanmar Government on 3 October 2013, is based upon CEDAW principles and sets out twelve key activity areas as delineated in the Beijing Platform of Action. Issues which the NSPAW focuses on include: women's role in management of natural resources and the environment, the promotion and protection of women's human rights, and women's participation in decision making processes concerning the community or national development. NSPAW has yet to be fully operationalised.

PROTECTION, RIGHTS, AND DEVELOPMENT OF INDIGENOUS PEOPLES AND ETHNIC MINORITIES

In February 2015, the law on Ethnic Rights Protection was approved by the President and passed by the Union Parliament. The law states that all of the Ethnic groups who originated in Myanmar are considered to be ethnic people. The objectives of the law are to ensure that people of ethnic groups as determined by the law enjoy equal citizenry rights and that their constitutional rights are met, to protect the culture, language and tradition of ethnic groups, and to develop the least developed regions which include many of the ethnic minorities. The law does not include any statement qualifying equality between women and men of ethnic groups.

- Article 4 of the Foreign Investment Law (2012) stipulates that, "business which can affect the traditional culture and customs of the national races within the Union" are restricted or prohibited. It should be noted that a new Myanmar Investment Law bringing together the domestic and foreign investment laws is currently being drafted by the Government and supported by the IFC.
- According to Article 3 of the Citizenship Law (1982), national races (the government's preferred term in referring to ethnic minorities) are: "Kachin, Kayah, Kayin, Chin, Bamar, Mon, Rakhine or Shan and ethnic groups as have settled in any of the territories included within the State as their permanent home from a period anterior to 1185 B.E., 1823 A.D." This narrow category of ethnicities that qualify as citizens excludes ethnic minority populations. Although gender is commonly considered in citizenship laws, there is no articulation of women's rights within the law.

LEGAL PLURALISM IN MYANMAR

Section 13 of the Myanmar Law Acts (1898) provides that "Where in any suit or other proceeding in the Union of Myanmar it is necessary for the Court to decide any question regarding succession, inheritance, marriage or caste, or any religious usage or institution, (a) the Buddhist law in cases where the parties are Buddhists, (b) the Muhammadan law in cases where the parties are Mohammedans, and (c) the Hindu law in cases where the parties are Hindus, shall from the rule of decision, except in so far as such law has by enactment been altered or abolished, or is opposed to any custom having the force of law."



Photo: Kaung Htet/Dyfam

1. For recent examples of rape perpetrated by Burmese soldiers stationed near dam sites in ethnic states, please see: Democratic Voice of Burma (2011), 'Shan teenager 'gang-raped by troops,' <https://www.dvb.no/news/shan-teenager-%E2%80%98gang-raped-by-troops%E2%80%99/14392> Accessed 18 November 2014; and Kachin Women's Association Thailand (2012) 'Gang-rape in church highlights Myanmar Army impunity for sexual violence in Kachin conflict.'

RIGHTS TO LAND AND NATURAL RESOURCES

- According to the Myanmar Government, although the Contract Act (1872), Transfer of Property Act (1882, minor updates in 2013) and Registration Act does not make specific references to women or gender, the term “whomever” prohibits discrimination against women. (CEDAW 2008).
- Legal pluralism exists in matters of inheritance, marriage and divorce. A variety of statutory and customary laws are applicable to women’s right to land, depending on their religious affiliation. Furthermore, customary land tenure is practiced in ethnic minority states, in accordance to traditional practices specific to their culture. These statutory and customary laws, more often than not, contain discriminatory clauses which negatively impact women’s right to land.
- The Forest Law (1992), Farmland Law (2012) and the Vacant, Fallow and Virgin Lands Management Law (2012) makes no reference to gender or women. However, the Farmland Law states that land will be registered to the head of the household; men are traditionally the head of the household in Myanmar. The laws do not provide for joint ownership of property by husband and wife (USAID, 2013).
- A new national Land Use Policy, which will be followed by a new national Land Law are currently under development.

BROAD NATIONAL DEVELOPMENT PLANS

- In January 2013, the Government of Myanmar launched its Framework for Social and Economic Reform. This is the framework for the National Comprehensive Development Plan, currently in development. The government is also currently developing five year plans for each key sector.
- The National Sustainable Development Strategy (NSDS) (2009) was developed by the National Commission on Environmental Affairs (NCEA), in consultation with government agencies and civil society, and officially adopted by the Ministry of Planning. The NSDS serves as a guiding document for ministries and agencies within the government. The strategy has a dedicated section on vulnerable groups; a sub-section is focused on women. In particular, reducing violence against women, women and the economy, and women and the environment.

ENERGY SECTOR DEVELOPMENT AND NATIONAL INVESTMENT GUIDELINES

The following laws, rules and directives may govern the implementation of hydropower projects:

- Notification 1/2013 of the Myanmar Investment Commission defining businesses open to foreign investors on certain conditions.
- Foreign Investment Law (2012) and Foreign Investment Rules (2013).
- Environmental Conservation Law (2012), which includes requirements for Environmental Impact Assessments (EIAs).
- State-Owned Economic Enterprises Law (1989).
- The Electricity Law (1984; updated 2014).
- The Companies Act (1914).
- The Land Policy (draft).

None of the above laws or directives refer specifically to women or include gender considerations.

The **Environmental Impact Assessment (EIA) Procedure** has yet to be enacted, information is based on fourth draft of the EIA guidelines (2013). The government is currently being provided with technical support by the international community on the development of EIA guidance. This has not yet been finalised.

Hydropower plants with an installed capacity greater than 15 megawatts, reservoir volume greater than 20,000,000m³, or reservoir area less than or equal to 400 hectares will require an EIA. A hydropower plant that does not meet these specifications but is greater than 1 megawatt in installed capacity will only require an Initial Environmental Examination (IEE). A social impact assessment (SIA) is a component of the EIA. However, the procedure makes no references to women or gender, and do not include a gender impact assessment.

SUMMARY

Currently, Myanmar laws afford little protection for women whose human rights may be impacted by hydropower projects. Although legislation stipulates or assumes gender equality, there is no law specifically focused on the promotion and protection of women’s human rights. However the NSPAW, a framework for women advancement, declares women’s human rights as one of its main focus areas. Though the government of Myanmar has yet to put in place a process to adequately regulate this framework, the Department of Social Welfare is working towards the implementation of the NSPAW framework in the near future. A number of laws which discriminate against women and ethnic minorities remain. Laws and policies specific to natural resources management, investment and social impact assessments also do not address the gendered impact of large-scale development and infrastructure projects such as hydropower. In the context of Myanmar, large infrastructure projects, including hydropower, are historically linked to a host of human rights violations, due to conflict and militarisation around dam sites. The gendered impact of conflict, displacement, as well as the prevalence of gender and sexual based violence needs to be adequately addressed in laws or regulation.



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