



Photo: Michael Simon

GENDER JUSTICE IN HYDROPOWER POLICY AND LEGISLATION REVIEW SYNTHESIS REPORT

2013



CGIAR Challenge Program on
WATER & FOOD
Andes • Ganges • Limpopo • Mekong • Nile • Volta



OXFAM
Australia

Authors Virginia Simpson with Michael Simon
Design Kate Bensen, Morgan White and Daniel Cordner
November 2013

Acknowledgment

This report has benefited from inputs from our national partner N60 Forum on Cambodia.

This report has been commissioned by Oxfam Australia as part of its *Balancing the Scales – Gender Justice in Hydropower* project for the Challenge Program on Water and Food MK 13 project.

This publication is available online at
www.oxfam.org.au/gi/manual and
CPWF.results.waterandfood.org



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

GENDER JUSTICE IN HYDROPOWER — POLICY AND LEGISLATION REVIEW SYNTHESIS REPORT

KEY FINDINGS

- Cambodia, Lao PDR and Vietnam all have similar national commitments to human rights and gender equity under a range of international treaties.
- Efforts to translate these commitments into national policy and legislation have varied across the three countries.
- Of Lao PDR, Cambodia and Vietnam, Lao PDR has the most developed gender content in its legal framework surrounding hydropower.
- The Mekong River Commission has commitments to mainstreaming gender, and the Initiative on Sustainable Hydropower is scoping member needs to improve consistent implementation of gender commitments in the context of hydropower development.

INTRODUCTION

This report constitutes a comparison of the laws and policies which do, or could, come into force in hydropower development in Cambodia, Lao PDR and Vietnam — and the degree to which they support gender justice in hydropower projects. At a national level, the method of research has been a wide-ranging desktop review of current national policy and legislation documents of two main types. The first are those specifically designed to guide hydropower development in the country, and these have been examined for clauses which support gender justice in projects. The second are other policy 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 also considers how these national laws and policies address the commitments inherent in the relevant international agreements to which the focus countries are a party. The scope of the research has not included examination of the roles or practice of any government agencies or structures.

THE STARTING POINT — TRADITIONAL GENDER ROLES

In order to appreciate how and why national legislation and policy has evolved the way it has in the focus countries, it is important to understand traditional views of gender in each. Vietnam and Cambodia are reasonably closely aligned in this sense, as both have a history of patriarchal mainstream culture. This means that men are regarded as household heads, and women have a lower social status and are expected to focus their energies on caring for their husbands and families. A general result is that women receive less education, have fewer rights and are less likely to contribute to decision making processes outside the home (Tran 2001, ADB 2012). In Vietnam these attitudes stem from Confucian ethics, and in Cambodia, from traditional codes of conduct for men and women known as the Chbab Srey and Chbab Bros. In contrast the Lao Tai, who comprise 67 percent of the Lao PDR population, generally maintain matriarchal practices (ADB 2012). This means that women have a higher status in the family and stand to inherit land and property (FAO 2012). However most of the ethnic minorities in Lao PDR subscribe to similar values as those described in Vietnam and Cambodia, and some maintain practices such as polygamy and marriage of young girls (ibid), meaning that overall Lao PDR only ranked 139 out of 186 countries in the UNDP's Gender Inequality Index in 2012¹ (UNDP 2012). Cambodia and Vietnam ranked 138 and 127 respectively (ibid).

NATIONAL POLICY FRAMEWORKS

NATIONAL CONSTITUTION

The Constitutions of all three of the focus countries uphold the rights of all of their citizens to equality before the law. Similarly, all three uphold women's equal status in the family. Vietnam and Cambodia's Constitutions specifically prohibit discrimination against women. Lao PDR and Cambodia's Constitutions both commit the state to actively progressing the development and welfare of women. On the whole, however, Cambodia's Constitution reflects more conservative views of women's roles in society (ie in family and child care), compared to those of Vietnam and Lao PDR which assert women's rights to economic and political equality.

1. Calculated based on a range of indicators based on empowerment, reproductive health and labour.

PROTECTION, RIGHTS, AND DEVELOPMENT OF WOMEN

Of the three countries, only Cambodia does not have a dedicated law to protect women or promote gender equality. Vietnam's **Law on Gender Equality (2006)** aims 'to ensure gender equality in all fields of politics, economy, culture, society and family; to support and create conditions for men and women to bring into play their abilities and provide them with equal opportunities to participate in the process of development and benefit from development'. With respect to gender justice in hydropower, this last clause is perhaps the most relevant. Lao PDR's **Law on the Development and Protection of Women (2004)** promotes equality in 'self-development', whereby 'women and men have the same value and opportunities in politics, the economy, society and culture, family [affairs], national defence and security, and foreign affairs...'

All three countries have current national strategies or projects related to women's development. Again, Vietnam seems to have the strategy which best targets the needs of women impacted by hydropower development. The **Gender Strategy for Agriculture and Rural Development (2005)** aims to improve Vietnamese women's 'access and involvement into the management of major resources, including land, water, infrastructure, credit lines, and other public services in the [agricultural and rural development] sector'. Further, the Strategy recommends 'targets on gender [and] sex -disaggregated monitoring and evaluation tools in development policies, plans, programs, and projects'. The other main gender/women related programs, namely **National Strategy on Gender Equality for the 2011-2020 Period (Vietnam)**, **National Strategy for the Advancement of Women (NSAW) (2011-2015) (Lao PDR)**, and **Neary Rattanak III (2009-2013) (Cambodia)**, have generally common goals such as the improvement of women's education, health, employment, political participation, and improving gender awareness, mainstreaming and machinery in their respective governments.

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

There is little specific legislation in any of the focus countries which protect the rights of ethnic minorities. However for ethnic minorities facing hydropower development, Lao PDR's **Technical Guidelines on Compensation and Resettlement in Development Projects (2005)** is the most valuable policy. The Guidelines require the development of a separate Ethnic Minority Development Plan in all instances where ethnic minorities are likely to be impacted by development.

Other policies and pieces of legislation in the three countries which address ethnic minorities focus on the elimination of discrimination and the general improvement of services and support to ethnic minorities. Both Lao PDR's **National Growth and Poverty Eradication Strategy (NGPES)** and Vietnam's **Law on Gender Equality (2006)** recognise the particular difficulties faced by ethnic women.

RIGHTS TO LAND AND NATURAL RESOURCES

Women's land rights, both to inheritance and ownership, are protected (as being equal with men) in all three countries by various instruments of policy. Similarly all three countries recognise that land acquired by a couple during their marriage (eg during resettlement) belongs equally to the wife and husband, and that land title certificates should display both names. In Vietnam, couples who have only one name on their certificate are able to request a new one including both. None of the other policies or laws in any of the countries significantly support women's access to land or natural resources, excepting Cambodia's **Sub-Decree on Social Land Concessions (2003)**, which guarantees female headed households rights to participate in social land concession programs².



² Social Land Concessions are the mechanism whereby land is granted to communities displaced by development in Cambodia

BROAD NATIONAL DEVELOPMENT PLANS

Of the three countries, Lao PDR's national planning strategies best incorporate issues of gender equity. The country's **Seventh National Socio-Economic Development Plan (2011-2015)**, which includes hydropower as a development priority, also identifies a range of actions related to capacity building of women to participate in political debate and economic development; increasing women's participation in provincial and sectoral planning and the integration of gender considerations into such; ensuring that women can access their rights; and intensifying gender-related research to improve all the above. Lao PDR's **National Growth and Poverty Eradication Strategy (NGPES)** also has an emphasis on hydropower as a means of attracting foreign investment, and has a dedicated section on Gender Strategy for Poverty Reduction, including clear actions for gender mainstreaming across the fields of agriculture, education, health, transport and political voice. By contrast, the various national development plans of Vietnam and Cambodia generally mention aspirations for gender equality, but do not integrate specific methods or targets for its achievement.

ENERGY SECTOR DEVELOPMENT AND NATIONAL INVESTMENT GUIDELINES

The gender content of the laws and policies in Lao PDR surrounding energy sector development far outstrips that of Cambodia and Vietnam, which do not address gender considerations at all. Lao PDR's **Renewable Energy Development Strategy (2011)** includes improving gender equality as one of its main objectives, as well as 'environmentally and socially sustainable development through enforcement of adequate safeguards to ensure... local communities' food security, and secure access to adequate land to meet and develop their livelihoods for all ethnic groups with special focus on women' (p16). The Strategy does not elaborate on how it will meet these objectives. However Lao PDR has strong and specific guidelines on the assessment of the social impact of development. The Environmental Impact Assessment requires a Social Management and Monitoring Plan (SMMP), and the SMMP is to be consistent with the **Technical Guidelines on Compensation and Resettlement in Development Projects (2005)**. The Technical Guidelines address gender issues in detail, including identifying specific problems women may face in resettlement, gender sensitive data collection and gender sensitive resettlement entitlements. The Technical Guidelines also outline the basic requirements for Ethnic Minority Development Plans, which include separate consultation with Indigenous women, and considerations of specific development assistance needed by Indigenous women.

None of the countries' general investment strategies make any mention of gender considerations.

LINKING NATIONAL POLICY TO INTERNATIONAL AGREEMENTS

Vietnam, Cambodia and Lao PDR have signed, ratified or acceded to a range of relevant international agreements, illustrated in the table below.

Table 1. International agreements with relevance to gender justice in hydropower development

	Vietnam	Cambodia	Lao PDR
CEDAW: Convention on the Elimination of All Forms of Discrimination against Women (adopted on 18/12/1979).	Signed 29 July 1980. Ratified 17 February 1982.	Signed 17 October 1980. Ratified 15 October 1992.	Signed 17 July 1980. Ratified 14 August 1981.
CEDAW-OP: Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (adopted on 06/10/1999).	Not signed.	Signed 11 November 2001. Ratified 13 October 2010.	Not signed.
ICESCR: International Covenant on Economic, Social and Cultural Rights (adopted on 16/12/1966).	Acceded 24 September 1982.	Signed 17 October 1980. Acceded 26 May 1992.	Signed 7 Dec 2000. Ratified 13 Feb 2007.
ICESCR-OP: Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (adopted on 16/12/1966).	Not Signed.	Not signed.	Not signed.
ICCPR: International Covenant on Civil and Political Rights (adopted on 16/12/1966).	Acceded 24 September 1982.	Signed 17 October 1980. Acceded 26 May 1992.	Signed 7 December 2000. Ratified 25 September 2009
ICCPR-OP: Optional Protocol to the International Covenant on Civil and Political Rights (adopted on 16/12/1966).	Not signed.	Signed 27 September 2004.	Not signed.
Declaration on the Rights of Indigenous People	Voted in favour at the UN General Assembly, 13 September 2007.	Voted in favour at the UN General Assembly, 13 September 2007.	Voted in favour at the UN General Assembly, 13 September 2007.

The articles from within each of these agreements which are most likely to advance gender justice in hydropower development are identified below, and linked with the policy-making efforts of the three focus countries.

CEDAW requires the elimination of all discrimination against women. Whilst upheld in the Constitutions, and whilst none of the laws or policies identified in this report have been actively discriminatory, active pursuit of gender equality is required to achieve it in reality. Vietnam and Lao PDR both have gender-focussed laws which take steps toward this goal, whereas Cambodia does not yet. Article 14 of CEDAW stipulates women's right to full participation in development, and Lao PDR's **Technical Guidelines on Compensation and Resettlement in Development Projects (2005)** and Vietnam's **Gender Strategy for Agriculture and Rural Development (2005)** best provide for this in the context of individual hydropower projects.

ICESCR guarantees in Article 1 the rights to subsistence, and in Article 7 the right to decent living. It is unclear how well the national planning specifications regarding the choice of land for resettlement in any of the countries uphold this obligation, however proper consultation with affected communities — including women — as required by various policy instruments across the three countries should contribute to a positive outcome.

ICCPR states in Article 3 that the advancement and development of women is to be a priority; in Article 23 that states are to attempt to ensure gender equality in marriage; in Article 25 that all shall have equal access to participation in public affairs and access to public services; and in Article 26 that all people are to be equal before the law. Equality before the law and in marriage are recognised by all three countries, and development of women addressed in the paragraph on CEDAW. Whilst all three countries state intentions to improve women's participation in public decision-making, Lao PDR's **Seventh National Socio-Economic Development Plan (2011-2015)**, most clearly articulates intentions to increase women's participation in provincial and sectoral planning and political debate.

The Declaration on the Rights of Indigenous People. The Constitutions of all three countries uphold the equality of Indigenous people, as required by Article 1. None of the countries, however, have evident policy provisions for the following: prevention of the dispossession of Indigenous people of their lands and resources or involuntary resettlement (Articles 8 and 10); the land rights further enshrined in Articles 27-29 and 32; or Articles 13, 18 and 19 which oblige states to help Indigenous people understand and participate in political and legal matters, particularly those that may affect them.

SUMMARY

As the rivers of the world come under increasing pressure to provide for growing populations and economic development, and river management becomes ever more politicised, it is important that decision makers are aware of the impact of hydropower development on different parts of the community. Gender is a variable often overlooked. Whilst Cambodia and Vietnam and particularly Lao PDR, all have provisions in their national policy framework which promote gender justice, ongoing development of more specific policy provisions, and their diligent application in projects will be the next challenge — both in their efforts to meet their international human rights obligations, and to develop sustainable national hydropower sectors.

REFERENCES

- Asian Development Bank (2012) 'Cambodia: Country gender analysis'. Asian Development Bank, Mandaluyong City, Philippines. <http://www.adb.org/documents/cambodia-country-gender-analysis> Accessed 24 May 2013.
- Food and Agriculture Organisation (2012). 'Gender and Land Rights Database: Lao PDR'. <http://www.fao.org/gender/landrights/report/en/> Accessed 18 May 2013
- Tran, Thi Que (2001). 'Land Reform and Women's Property Rights in Vietnam'. Center for Gender, Environment and Sustainable Development Working Paper, Hanoi, Vietnam. Available for download at <http://www.pdfio.com/k-1783628.html> Accessed 17 May 2013.
- United Nations Development Program (UNDP) (2012) Gender Inequality Index. <http://data.un.org/DocumentData.aspx?q=HDI&id=332> Accessed 20 May 2013.

NOTES



Australian Aid—managed by the
Challenge Program on Water and
Food on behalf of AusAID



CGIAR Challenge Program on
WATER & FOOD
Andes • Ganges • Limpopo • Mekong • Nile • Volta

Supported by CPWF Mekong



OXFAM
Australia