



Working Across Borders: Challenges for Business and Human Rights

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Who is International Rivers?

- International human rights and environmental organization protecting rivers and communities who depend on them
- Work with local communities, grassroots organizations, environmentalists, human rights advocates
- Focus on hydropower, energy and water policy, water governance, human rights, climate change, corporate accountability and international financial institutions

www.internationalrivers.org

Context for outbound investment

- Intra-regional investment within ASEAN
 - AEC has led to rapid escalation in intra-regional investment over past decade
 - Differences in regulatory frameworks brings challenges for safeguards and accountability
- Example of Thai outbound investment
 - Totaled \$13.3 billion in 2016, concentrated in CLMV
 - Includes involvement in massive energy, land infrastructure projects with significant environmental and human rights impacts



“The rapid loss of biological diversity around the world should be setting off alarm bells. We are well on our way to the sixth global extinction of species in the history of the planet, and States are still failing to halt the main drivers of biodiversity loss, including habitat destruction, poaching and climate change.

What is less well understood is that the loss of biodiversity undermines the enjoyment of a wide range of human rights, including rights to life, health, food and water.”

- John Knox, UN Special Rapporteur on human rights and the environment, World Wildlife Day, March 2017

Framework for human rights and the environment

- ASEAN Human Rights Declaration
 - Art. 28 (f) right to a safe, clean and sustainable environment
- ASEAN Inter-governmental Commission on Human Rights
 - EIA, environmental harm and climate change
- UN system – Special Rapporteur on Human Rights and the Environment (John Knox)
 - Procedural rights and obligations (FPIC, information, participation)
 - Substantive rights and obligations (rights to water, food, health, housing)
 - Heightened obligations to protect those most vulnerable to harm

Mekong River and human rights

- Second most biodiverse river in the world, over 1000 species
 - Iconic & endangered species: *giant catfish*, *Irrawaddy dolphin*
- Most productive freshwater fishery
 - Over one million tonnes of fish caught annually in Cambodia & Vietnam (1/5 global inland catch).
 - Retail value of Mekong fisheries 4.2-7.6 billion USD per year.
- Supports agriculture throughout the basin and Mekong Delta

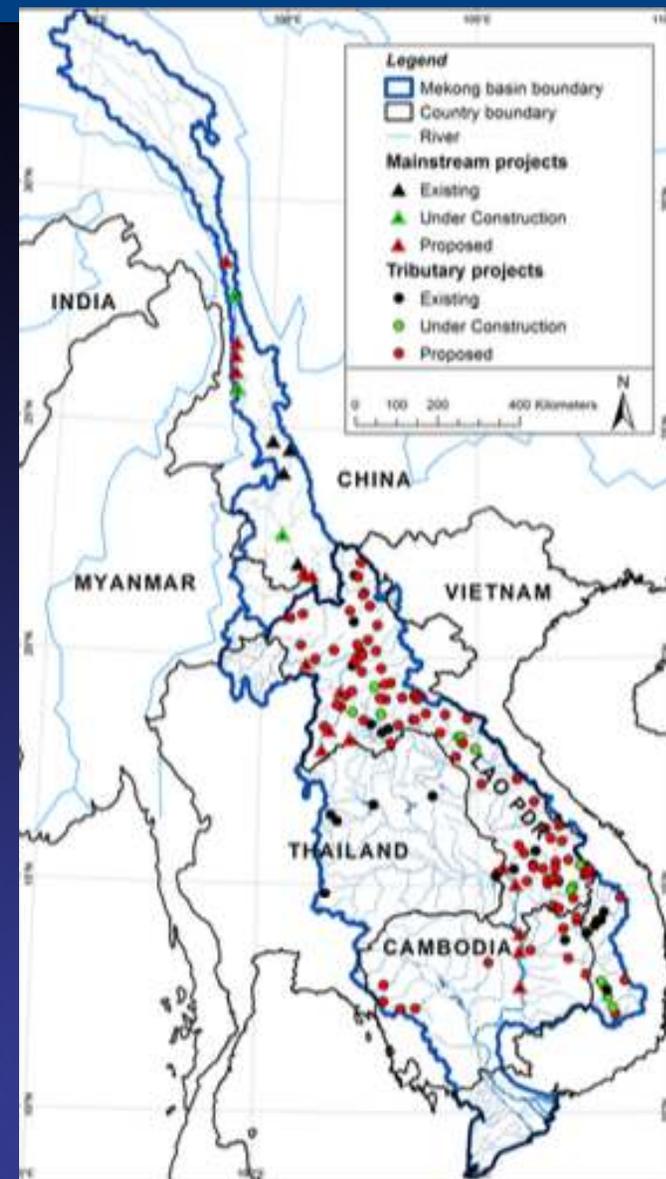






Lower Mekong mainstream dams

Source: *International Rivers*



Dams in Lower Mekong Basin

Source: *Mekong Flows*,
University of Canterbury

Transboundary water governance: Mekong River Commission

Mekong Agreement 1995 established MRC to:

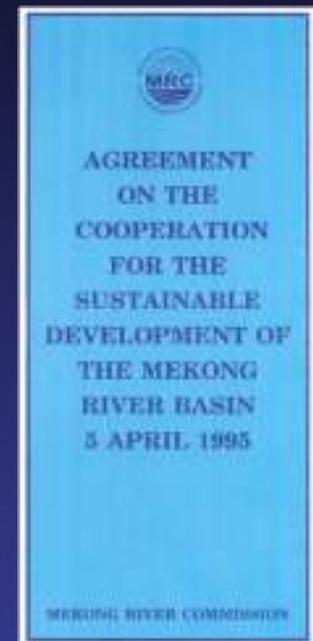
“Promote understanding and cooperation among the MRC member countries in a constructive and mutually beneficial manner to ensure the sustainable development, management and conservation of the water and related resources of the Mekong River Basin.”

- Members: Thailand, Laos, Vietnam, Cambodia
- China and Myanmar are dialogue partners



Procedures for Notification, Prior Consultation and Agreement

- Apply to decisions on hydropower projects in the Mekong Basin
- Prior Consultation: a six month process (minimum) enabling other states to evaluate the impact of the proposed project on their use of the river 'with the aim of arriving at an agreement'.
- Prior consultation neither a right to veto the use nor unilateral right to use water without taking into account other riparians' rights.



Avenues used by communities to seek accountability

- Parliamentary Committees
- Thai Administrative Court
- National human rights institutions
- OECD Guidelines
- UN Human Rights Council
- UN treaty bodies

Thai Involvement in Xayaburi

Power purchase agreement for sale of 95% of Electricity for Thailand

Thai companies developing project in consortium with Lao government and companies

Project financing from six Thai banks





Xayaburi Dam administrative lawsuit:
plaintiffs outside court at filing of appeal

“It is widely known that the project may cause impacts to the environment, water quality and quantity, the flow of water, ecological balances of the Mekong basin and other transboundary impacts in riparian countries, particularly local communities in the eight riparian provinces of the Kingdom of Thailand, which may bear extensive impacts on environmental quality, public health, sanitation, livelihoods, or community interests.”

- Supreme Administrative Court of Thailand



Don Sahong complaint to SUHAKAM:
a fisherman casts his net next to the coffer dam

OECD Guidelines for Multinational Enterprises



Xayaburi complaints against Poyry and Andritz:
project construction site

Development of ETOs

- UN Guiding Principles on Business and Human Rights
- Maastricht Principles on ETOs
- Committee on ESCR – General Comment No. 24
- Development of a binding treaty on business and human rights

Developments on ETOs Thailand and the region

- Thai NHRC mandate for extraterritorial cases – investigation of cases involving SEZs, land concessions, mining, hydropower
- Thai Cabinet resolution on ETOs
- ETO proposals in development of regional NAPs
- OECD complaints – recognition of role of contractors, suppliers, commitments to develop human rights policy and conduct human rights due diligence

Strengthening ETOs – best practice from NAPs

- Include ETOs in legislation, corporate compliance and trade mission mandates
- Adhere to OECD Guidelines, establish NCP
- Include all relevant branches of government in NAP to ensure policy coherence
- Ensure human rights compliance for development financing and outbound investment policies
- Human rights training for government agencies and diplomats
- Establish judicial and non-judicial mechanisms and stakeholder engagement platforms between investors and communities