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**‘We will fight until we die, we will not leave’<sup>1</sup>: Dams and environmental rights in the Mekong**

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Hundreds of large dams are currently planned or underway along the Mekong River and its tributaries, driven by a demand for energy and revenue to boost economic development. Yet hydropower development not only has significant environmental costs, but also human ones. People are forced to relocate from their homelands; many lose access to fresh water, productive land, community forests and fish, an essential source of protein in local diets. Resettlement programs often do not provide adequate farmland for rural smallholders, as arable land in the region is increasingly tied up in corporate agricultural concessions. For populations who live downstream, the exploitation of the Mekong River by private developers has detrimental impacts on fish stocks, agricultural productivity, water quality and seasonal flow patterns. Diminished access to food and water security and the loss of material and cultural livelihoods are fundamental human rights concerns.

These issues are not isolated to the Mekong River Basin. Throughout Southeast Asia, hydropower development is accelerating against a backdrop of natural resource competition and often at the expense of marginalized ethnic groups and indigenous peoples. Local communities across the region are struggling to cope with the rush of dam-building. For instance, in 2011, the massive 6,000-megawatt (MW) Myitsone dam, proposed for construction in the Irrawaddy Basin in Myanmar, was postponed by former President Thein Sein following public outcry and a grassroots people’s campaign opposing the project. Following recent parliamentary elections in which the new National League for Democracy (NLD)-led government swept into power, the project is back on the table for consideration. The struggle between governments, developers and local communities is as much a struggle for human rights as it is for the development choices the will shape the future of the region and its people.

## The case of the Lower Sesan II dam in Cambodia

In Stung Treng province in northeastern Cambodia, indigenous villagers in Kbal Romeas are preparing to leave their homes for newly developed resettlement sites, paving the way for the 400MW Lower Sesan II dam (LSII), which will officially displace around 5,000 people.<sup>2</sup> The dam is under rapid construction by a consortium of Chinese and Cambodian companies. Cambodian Prime Minister Hun Sen and his government promote hydropower construction as a boon to economic development and energy generation in a country where over 75 per cent of people lack access to electricity.<sup>3</sup>

Some villagers in Kbal Romeas have agreed to relocate. Yet villagers assert that in some cases agreement to move was obtained under duress, or because people felt they had little choice.<sup>4</sup> Others have vowed to remain, even to die in their homes, expressing their deep cultural and historical relationship to the landscape. Relocation due to the dam will result in extensive loss of fisheries, arable land, and community forest. There is little information on plans to ensure long term food security, or support a transition to new forms of livelihoods. Reports from the resettlement site have emerged, describing poor quality housing and farmland. Resettlement is an extremely difficult and fraught process, likely to fail without adequate resources, community buy-in, and extensive consultation and planning.<sup>5</sup> None of these factors have been addressed in the relocation of people from Kbal Romeas, or the other villages to be affected by the LSII project. Further, the indigenous identity and legislated cultural rights of those displaced have scarcely registered in the project resettlement plans.

The human rights footprint of LSII extends far beyond involuntary resettlement in the reservoir area. The dam blocks both the Sesan and Srepok Rivers, major tributaries forming essential channels and spawning grounds for long-distance migratory fish in the Mekong Basin. A 2012 study, released after the Cambodian government had already approved the LSII dam's environmental impact

assessment (EIA),<sup>6</sup> estimated a 9.3 per cent decrease in fish biomass across the entire Lower Mekong Basin.<sup>7</sup> Hundreds of thousands of villagers along the linked ecosystems of the Mekong River and Tonle Sap Lake face significant decline in fish catch, which is critical to the food security and nutrition of local communities. These impacts have major implications for the right to food and livelihood of affected populations. The project's EIA alluded to its extensive impact on fisheries, but did little to address them. Ecological transformation and the loss of river-based livelihoods is akin to being displaced without physical relocation, yet these communities will be offered no compensation.

Decision-making on LSII, as for many dams in the region, has suffered from a lack of transparency and public debate. Official statements by government officials frame hydropower development as inevitable in a country and region where a large proportion of the population lacks access to electricity. Yet many large dams support electricity for export or industrial rather than local or domestic use. Cost-benefit analyses tend to underestimate environmental and social costs and exclude assessments of alternatives. The Cambodian government has paid scant attention to renewable and smaller-scale decentralized energy technologies, which are increasingly cost-competitive and relatively effective in ensuring electricity access in rural areas where it is lacking, with much lower human rights and environmental costs.

### Environmental rights: development for whom?

Questions surround the public interest value of many large dam projects. While experiencing a boom in parts of Southeast Asia, hydropower development is in decline in other parts of the world. Globally from 2013 to 2015, new capacity has rapidly dwindled from 38 gigawatts (GW) to 22GW only two years later.<sup>8</sup> Studies show that hydropower projects are economically questionable, with cost overruns averaging 96 per cent.<sup>9</sup> Despite justifications of large hydro as 'clean energy,' research has found that large dams in tropical basins are a significant source of methane emissions

contributing to climate change,<sup>10</sup> as well as to other serious social and environmental problems.<sup>11</sup> This is a significant concern in the Mekong, a region facing major impacts from climate change. Declining water levels, reduced sediment and rising sea levels are already causing saline intrusion, disrupting agricultural productivity in Vietnam's Mekong Delta. Increases in the occurrence and intensity of extreme weather events due to climate change, such as droughts and tropical storms, may compound the impacts of dams and the threats to local populations. Shifts in weather patterns and water flows also raise questions about the long-term viability of large dams, and the justifications for developing them.

The electricity to be generated by LSII is proposed for domestic consumption. However, much of the power is speculated to be routed to energy-hungry mining and industrial developments in Stung Treng and neighboring provinces. Many of the arguments used by Southeast Asian governments to promote dams emphasize their importance to boosting development and growth for countries long dogged by poverty and economic stagnation. The net advantages of dams are attributed to an abstract 'nation'. However, these advantages generally privilege an elite few, with marginalized people bearing the brunt of the impacts.

The international human rights framework prohibits involuntary resettlement for large-scale development projects not justified by 'compelling and overriding public interest'.<sup>12</sup> Due to the well-documented economic and environmental costs of large-scale hydropower projects, as well as the inequitable social benefits, there are clear grounds for scrutinising and contesting environmentally destructive dam projects from a human rights perspective.

### Human rights and the environment

In March 2016, the United Nations Human Rights Council adopted a resolution on human rights and the environment, recognizing that environmental degradation and unsustainable use of natural resources

interferes with the enjoyment of human rights.<sup>13</sup> It built on work of the Special Rapporteur on human rights and the environment, who has set out a framework for governments to protect against such interference, including:

(a) procedural obligations, including to make environmental information publicly available, facilitate public participation in environmental decision-making and provide access to legal remedies;

(b) substantive obligations to adopt institutional frameworks to protect against environmental harm that may infringe on enjoyment of human rights; and

(c) heightened obligations to protect those who are most vulnerable to such harm.<sup>14</sup>

Adherence to this framework requires governments to ensure appropriate weight is given to human rights in environmental decision-making, and that alternatives which minimize impacts on human rights and vulnerable populations are favoured where reasonably available.

These obligations extend to corporate stakeholders involved in mega-projects. Governments in the region lack the technical and financial capacity to implement projects themselves. Most Mekong dams are therefore driven by cross-border investment from neighbouring countries such as Thailand and China.

Yet local communities in both home and host states have struggled to find effective avenues to seek redress for the impacts of such projects. For instance, villagers in northern Thailand affected by the 1,285MW Xayaburi Dam in Laos filed a lawsuit in Thailand's Administrative Court challenging Thai state agencies' approval of a Power Purchase Agreement for the project. The approval was given without adequate community consultation and in the absence of a transboundary EIA examining the impacts of the project on Thai communities. Originally filed in 2012 and dismissed by the lower court, the case saw a landmark appeal

decision by the Supreme Administrative Court accepting jurisdiction, and remains ongoing nearly five years later.<sup>15</sup> Another example is seen in a complaint by Cambodian and Thai communities and NGOs to the Malaysian Human Rights Commission against the Malaysian developer of the Don Sahong Dam in Laos. The commission ultimately concluded that it lacked the mandate to conduct an extra-territorial investigation into the project, but issued recommendations to the developer to ensure respect for human rights in its overseas operations and to the Malaysian government to take further action to regulate the conduct of companies in outbound investments.<sup>16</sup>

International and domestic law is slowly evolving on transboundary harm and extraterritorial human rights obligations (ETOs).<sup>17</sup> In one example from the region, a recent Thai Cabinet resolution and policy guidelines from the Ministry of Foreign Affairs on the Dawei Special Economic Zone (SEZ) in Myanmar noted the responsibility of the Thai government and investors to monitor the human rights impacts of overseas investments in line with the United Nations Guiding Principles on Business and Human Rights.<sup>18</sup> Unfortunately, enforcement and domestic implementation remain lacking.

## Conclusion

The struggle for human rights in the Mekong is inextricably bound up with decisions on environmental governance and the use of natural resources. More must be demanded of the human rights framework to secure the voices of all, especially the most vulnerable, in these decisions—and in determining the region's future.

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1 Sign in Khmer in Kbal Romeas village, Stung Treng Province, Cambodia.

2 International Rivers (n.d.) 'Lower

Sesan 2 Dam', [www.internationalrivers.org/campaigns/lower-sesan-2-dam](http://www.internationalrivers.org/campaigns/lower-sesan-2-dam).

3 Council for the Development of Cambodia (2013) *Cambodia Investment Guidebook 2013* (Phnom Penh: Japanese International Cooperation Agency).

4 Mekong Watch (n.d.) 'Field Notes: Interview at Affected Village in February 2015 Regarding Asset Survey Held on Lower Sesan 2 Dam', [www.mekongwatch.org/PDF/LS2\\_FieldNoteRegardingAssetSurvey.pdf](http://www.mekongwatch.org/PDF/LS2_FieldNoteRegardingAssetSurvey.pdf)

5 T. Scudder (2005) *The Future of Large Dams: Dealing with Social, Environmental, Institutional and Political Costs* (London and Sterling: Earthscan).

6 Key Consultants (Cambodia) Ltd. (2008), *Environment Impact Assessment for Feasibility Study of Lower Sesan 2 Hydropower Project* (Phnom Penh).

7 G. Ziv et al. (2012) 'Trading-off Fish Biodiversity, Food Security and Hydropower in the Mekong River Basin', *Proceedings of the National Academy of Sciences* 109(15), 5609–5614.

8 International Renewable Energy Agency (n.d.) *2016 Renewable Capacity Statistics*, [www.irena.org/DocumentDownloads/Publications/IRENA\\_RE\\_Capacity\\_Statistics\\_2016.pdf](http://www.irena.org/DocumentDownloads/Publications/IRENA_RE_Capacity_Statistics_2016.pdf)

9 A. Ansar, B. Flyvbjerg, A. Budzier, & D. Lunn (2014) 'Should We Build More Large Dams? The Actual Costs of Hydropower Megaproject Development', *Energy Policy*, 1-14.

10 M. Manibo (2016) 'Are mega dams a solution or burden to climate change?', *Eco-business*, 4 May; CNRS (Délégation Paris Michel-Ange) (2014), 'Ebullition causes methane emissions in tropical reservoirs', *ScienceDaily*, 13 August.

11 J. Kirchner (2016) 'Why we urgently need more research on the social impacts of dams', [www.water.ox.ac.uk/why-we-urgently-need-more-research-on-the-social-impacts-of-dams](http://www.water.ox.ac.uk/why-we-urgently-need-more-research-on-the-social-impacts-of-dams)

12 United Nations (1998) *Guiding Principles on Internal Displacement*, UN Doc. E/CN.4/1998/53/Add.2, Article 6.

13 United Nations General Assembly (2015) *Human Rights Council Resolution 28/11: Human rights and the environment*, UN Doc A/HRC/RES/28/11.

14 J. Knox (2015) 'Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment', Human Rights Council 31<sup>st</sup> session, UN Doc A/HRC/31/53, at para. 3.

15 Business and Human Rights Resource Centre (n.d.) 'Xayaburi dam lawsuit (re Laos & Thailand)', <http://business-humanrights.org/en/xayaburi-dam-lawsuit-re-laos-thailand>

16 Business and Human Rights Resource Centre (n.d.) 'National Human Rights Commission of Malaysia responds to complaint about adverse environmental & social impacts of Don Sahong dam construction', <https://business-humanrights.org/en/national-human-rights-commission-of-malaysia-responds-to-complaint-about-adverse-environmental-social-impacts-of-don-sahong-dam-construction>

17 *The Maastricht Principles on Extra-territorial Human Rights Obligations of States in the area of Economic, Social and Cultural Rights* (2013), were developed by a group of jurists to provide guidance on the application of the human rights framework to ETOs.

18 Pianporn Deetes (2016) 'Visit is a chance to rethink investments', *Bangkok Post*, 23 June, [www.bangkokpost.com/opinion/opinion/1017569/visit-is-chance-to-rethink-investments](http://www.bangkokpost.com/opinion/opinion/1017569/visit-is-chance-to-rethink-investments)