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Thai foreign direct investment and human security implications: A case study of the Xayaburi Dam in Lao PDR

Naruemon Thabchumpon and Carl Middleton

Abstract

The Xayaburi Dam is a 1,260 megawatts project proposed to be built on the Mekong River’s mainstream in Xayaburi Province, Lao PDR. The project’s lead developer is the Thai construction company Ch. Karnchang, the proposed financiers are Thai commercial banks, and 95 percent of the electricity generated would be exported to Thailand. This paper determines how the Xayaburi Dam could affect human security at the regional scale and in the locality of the project, and evaluates the extent to which decision-making through the intergovernmental Mekong River Commission and the energy planning process in Thailand has accounted for these potential changes in human security. Overall, the paper seeks to determine how does the political economy of regional economic integration acknowledge, account for, and in turn could shape changes to human security at the local and regional levels in the case of the proposed Xayaburi Dam.

Introduction

Demand for electricity in Thailand is growing rapidly—driven by both export-led industrial expansion and growing domestic consumer markets. Whilst the extent of this demand growth and the best way to meet it is increasingly contested between civil society and govern-

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ment agencies, power imports to Thailand, in particular hydropower imports from Lao PDR, is high on the agendas of both the Royal Thai Government and the Government of Lao PDR (Middleton et al., 2009).

Since the late 1980s, political and economic cooperation between Thailand and Lao PDR have grown notably closer, and significant volumes of foreign direct investment (FDI) from Thailand has been directed towards Lao PDR (Chambers, 2009). As of 2007, Thailand FDI into Lao PDR amounted to at least US$1.3 billion in 130 projects, with major investments in particular in the contract farming and hydropower sectors. This has been facilitated in part by the Asian Development Bank’s (ADB) Greater Mekong Subregion (GMS) program that has promoted regional economic integration since the early 1990s. Regional economic integration has undoubtedly brought benefits to some, and by the ADB’s measurement the proportion of people living in extreme poverty has dropped significantly (ADB, 2008); between 1990 and 2003, the proportion of people living on less than US$1 per day fell from 53 percent to 29 percent in the Lao PDR, and from 10 percent to less than 1 percent in Thailand.

Yet, whilst conventional economic indicators such as Gross Domestic Product may show growth, statistics such as these say little about whether human security is strengthening. Within the Mekong Region a large portion of the goods and services that enrich people’s quality of life and reinforce human security are found outside of the formal monetary economy. There exists a body of evidence indicating that life is getting harder and more insecure especially for those at the margins of the region’s increasingly market-orientated economy (Guttal, 2006; Cornford and Matthews, 2007).

Spurred by the rapid rate of industrial development in the Mekong Region, since 2006, eleven large hydropower dams have been proposed for the lower Mekong River’s mainstream by Thai, Chinese, Malaysian, and Vietnamese developers. The Mekong River is a trans-boundary river shared between China, Myanmar/Burma, Thailand, Lao PDR, Cambodia, and Vietnam. The lower Mekong River hosts the world’s most productive inland fishery, and the river’s natural resources are important to the livelihoods and local economies of millions of people throughout the river basin (Dugan, 2008; ICEM 2010). The Xayaburi Dam, proposed by the Thai construction company Ch. Karn-
chang, is located in northern Lao PDR and is the project at the most advanced stage of design. The project, if built, would cost US$3.5 billion to be financed by Thai commercial banks, and would generate 1,260 megawatts of electricity, of which 95 percent would be exported to Thailand.

A strategic environment assessment (SEA) report commissioned by the Mekong River Commission (MRC) found that the Xayaburi Dam would require the resettlement of approximately 2,130 people from ten villages in Lao PDR (ICEM, 2010). In addition, the report estimated that more than 200,000 people located near the dam would experience impacts to their livelihoods due to a loss fisheries, agricultural land, and riverbank gardens, and impacts to gold panning activities. The dam would irreversibly change the aquatic habitat and ecosystem of the Mekong River, for example by blocking fish migration between Luang Prabang in Lao PDR and Chiang Saen in Thailand, with potential wider impacts throughout the river basin.

Given the close relationship between rural communities’ livelihoods in Lao PDR and the natural resource base on which many presently depend, Thailand’s investments into hydropower dams, such as the proposed Xayaburi Dam, has the potential to affect all dimensions of the local community’s human security. Whilst resettlement and livelihood replacement programs are often implemented, the success of these programs to date in Lao PDR has been limited (International Rivers, 2008). Because of the trans-boundary character of the Mekong River, the Xayaburi Dam would also affect the human security of riparian communities in neighboring countries too, in particular Thailand, which is located nearest.

At the national level, and within the context of regional economic integration, notions of national security are shifting from a traditional state-centric approach to also incorporating non-traditional security considerations that account for political, economic and ecological security concerns, for example, from illegal migration, transnational crime, and environmental damage across borders.

This paper examines how the proposed Xayaburi Dam could affect human security in the locality of the project and at the regional scale. The paper outlines the current extent of hydropower development in Lao PDR and the role of Thai FDI within the sector. The paper then identifies the potential human security benefits and impacts of
the Xayaburi Dam at the local and regional scale, and then evaluates the extent to which decision-making through the intergovernmental Mekong River Commission and the energy planning process in Thailand has accounted for these potential changes in human security. Overall, the paper seeks to determine how does the political economy of regional economic integration acknowledge, account for and in turn could shape changes to human security at the local and regional level in the case of the proposed Xayaburi Dam.

**Research approach**

A desk-based literature review identified the recent trends and policies of Thai FDI into Lao PDR’s hydropower sector, summarized the current literature on policy implementation in practice, and compiled the current state of knowledge regarding the Xayaburi Dam. To research the decision-making process and policy context in Thailand, semi-structured interviews were conducted with the Electricity Generating Authority of Thailand (EGAT), the Energy Regulatory Commission, the Thai National Mekong Committee (TNMC), and the Thai-Lao Business Council.3

A field visit to the Xayaburi Dam project area was undertaken from 15 to 18 July 2011. Villages upstream and downstream of the project site were visited, including villages that would be required to be resettled either wholly or partly (Ban Houay Suay, Ban Tha Dua, New Ban Talan and Ban Khok Tom, Xayaburi District, Xayaburi Province; Ban Pak Noen and Ban Pak Mon, Nan District, Luang Prabang Province) and those that were not required to be resettled, but whose resources would be affected due to the project (Ban Sangkhalok and Ban Xiengkeo, Luang Prabang District, Luang Prabang Province). Three to five semi-structured interviews were conducted with interviewees met on a random basis in the villages. Whilst more extensive study is required for systematic human security assessment in these villages, the fieldwork offered the researchers insights into the local situation in Xayaburi province for the communities who would be affected if the project is built.
Hydropower development in Lao PDR

Lao PDR’s total hydropower potential is approximately 26,500 megawatts (MW). Through the construction of large hydropower dams for power exports to neighboring countries, facilitated by FDI and development aid, the Government of Lao PDR holds an ambition to become the “battery of Southeast Asia” to generate revenues from hydropower exports. As of March 2010, Laos had eight hydropower dams in operation, seven officially under construction, 18 at a planning stage, and 51 at a feasibility stage.

The Government of Lao PDR is a one-party socialist state where media freedom is limited, independent civil society organizations are restricted, and ensuring good governance is a serious challenge (Stuart-Fox, 2006). Many of Lao PDR’s laws, regulations, and policies related to hydropower dams, developed with support from the ADB and World Bank during the design and construction of the Nam Theun 2 hydropower dam, contain provisions for community participation, project information disclosure, and compensation and resettlement with livelihood restoration for communities affected by hydropower development. However, whilst Nam Theun 2 is now complete and was intended to be an example of best practice for subsequent hydropower developers in Lao PDR to emulate, the project has struggled to meet a number of its environmental and social commitments, and subsequent hydropower projects are not following these standards; for example, environmental impact assessments and resettlement action plans have generally not been disclosed to the general public and are often of questionable quality, and there has been limited progress to operationalize the National Policy on the Environmental and Social Sustainability of the Hydropower Sector (2005) (Lawrence, 2009).

Whilst export-orientated hydropower development is a growing sector of Lao PDR’s economy and a potentially significant source of government revenue, which could be reinvested back into the country’s development and could therefore reinforce human security, the above circumstances also significantly enhance human security risks associated with hydropower development, particularly for the hundreds of thousands of villagers who would be affected at the project level.
Thai investment into Lao PDR's hydropower sector

Thailand’s peak power demand in 2009 was 22,315 MW, whilst Thailand’s total potential generating capacity was 29,212 MW (EGAT, 2010). Thailand’s most recent Power Development Plan (PDP), prepared by the Electricity Generating Authority of Thailand (EGAT) in 2010, estimates that electricity demand will almost triple to 65,547 MW by 2030 (EGAT, 2010).

Meeting Thailand’s power demand is a major driver for hydropower development in Lao PDR. Since 1993, the governments of Thailand and Lao PDR have drawn up series of Memorandum of Understanding (MoUs) to collaborate in export-orientated hydropower development in Lao PDR, the most recent signed on 22 December 2007 for 7,000 MW. Thailand presently imports a total of 1,260 MW of electricity from three large hydropower plants in Lao PDR, namely: Houay Ho (126 MW); Theun Hinboun Dam (214 MW); and Nam Theun 2 (920 MW). Over the next seven years alone, according to Thailand’s PDP, Thailand intends to import a further 3,069 MW of electricity from three hydropower dams and one lignite-fired power station (Table 1). Until 2030, the PDP predicts an indicative total of 10,749 MW of power to be imported, largely from Lao PDR and Burma/Myanmar (EGAT, 2010).

As a project developer and financier, Thailand plays a major role in developing hydropower dams in Lao PDR to export to Thailand’s power markets. Table 1 summarizes the Thai power developers and financiers for projects in operation or specified in the Thai PDP from 2010 to 2017. Thai project developers are conducting feasibility studies in Lao PDR on at least eleven more hydropower projects at present.

In the case of the proposed Xayaburi Dam, the project’s Thai developers are Ch Karnchang (50 percent), PTT plc (25 percent), EGCO (12.5 percent), and the Bangkok Expressway Public Company (7.5 percent),4 and the project’s proposed financiers are Kasikorn Bank, Bangkok Bank, Siam Commercial Bank and Krung Thai Bank. The Xayaburi Dam is not specified for development within Thailand’s most recent PDP. However, the estimated commission date for the Xayaburi Dam is 2019 if the project is approved, and therefore beyond the timeframe of 2017 for which EGAT specifies specific power import projects in the PDP.5
Table 1: Thai Developers and Financiers of Hydropower Projects in Lao PDR

<table>
<thead>
<tr>
<th>Project</th>
<th>Thai Developers*</th>
<th>Thai Financiers*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Houay Ho (152 MW; commissioned 1999)</td>
<td>HHTC (20%)</td>
<td>Unknown</td>
</tr>
<tr>
<td>Theun Hinboun (220 MW; commissioned 1998)</td>
<td>GMS Power (20%)</td>
<td>Refinancing in 2002 by unidentified Thai banks**</td>
</tr>
<tr>
<td>Nam Theun 2 (1075 MW; commissioned 2010)</td>
<td>Electricity Generating Company of Thailand (35%)</td>
<td>Bangkok Bank, Bank of Ayudhya, Kasikorn Bank, Krung Thai Bank, Siam City Bank, Siam Commercial Bank, Thai Military Bank</td>
</tr>
<tr>
<td>Nam Ngum 2 (615 MW; COD 2013)</td>
<td>Ch. Karnchang (28.5%), Ratchburi (25%), Bangkok Expressway (12.5%), TEAM Consulting Engineering (1%)</td>
<td>Krung Thai Bank, Siam City Bank, Thai Military Bank</td>
</tr>
<tr>
<td>Theun Hinboun Expansion Project (220+60 MW; COD 2012)</td>
<td>MDX (20%)</td>
<td>Bank of Ayudhya, Kasikorn Bank, Siam City Bank, Thanachart Bank</td>
</tr>
<tr>
<td>Hongsa Lignite (1878 MW; COD 2015)</td>
<td>Ratchaburi (40%), Banpu (40%)</td>
<td>Siam Commercial Bank, Bangkok Bank, Krung Thai Bank, Government Saving Bank, Kasikorn Bank, Bank of Ayudhya, Siam City Bank, Thai Military Bank</td>
</tr>
<tr>
<td>Nam Ngum 3 (460 MW; COD 2017)</td>
<td>Ratchaburi (25%)</td>
<td>Unknown</td>
</tr>
</tbody>
</table>

COD = Commission Operation Date
* Partners in consortiums; *** International Financing Review Asia, 2 February 2008; Table from Middleton (2009) and www.poweringprogress.org (last visited 15 August 2011)
Whilst as of August 2011 the Xayaburi Dam is yet to be officially approved by the Government of Lao PDR, the government has signed a number of agreements of deepening commitment with Ch. Karnchang since first signing an MoU in May 2007. A project development agreement was signed between the Government of Laos and Ch. Karnchang in November 2008, and in June 2010 Ch. Karnchang established a subsidiary company in Lao PDR, Xayaburi Power Company Limited, with an initial registered capital of 800 million baht. In October 2010, the Government of Lao PDR signed a concession agreement with the company. An MoU for a power purchase agreement was signed between EGAT and the Government of Lao PDR in July 2010, indicating EGAT’s interest to purchase 1,220 MW of electricity. The power would be exported via a 200 kilometer long transmission line to Loei Province in Northeastern Thailand.

The political economy of trans-border human security

The human security framework developed by Sen and Ogata (2003) considers human security according to the following dimensions: economic security, food security, health security, environmental security, personal security, community security and political security. Their conceptual framework for human security emphasizes a focus on both the individual (empowerment and capability) and the role that institutions play (protection and opportunity). In this paper, we consider how the political economy of regional economic integration is informed by and in turn shapes human security changes at both the local and regional level. A political economy framework enables an examination of the relative bargaining capabilities of the various agencies actually engaged in or entitled to engage in the decision-making processes at sub-national, national, and regional levels in terms of the amount and quality of political and economic resources that they can bring to the bargaining table. For that purpose, we consider the relative strengths and weaknesses of multiple actors, including nation-states and their institutions and civil societies, involved in the multi-scaled agenda-setting and decision-making processes surrounding the Xayaburi Dam.
Human security impacts from Xayaburi Dam

This section presents a summary of the most significant potential benefits and impacts to the human security of riparian communities living nearby the project, as well as beyond the project locality at the national and regional scales. It is beyond the scope of this paper to conduct a full human security impact assessment, which would require extensive field research. Instead we seek to demonstrate the range of multi-scaled impacts and benefits to human security of the Xayaburi Dam by analyzing information compiled by the Strategic Environment Assessment (SEA) report commissioned by the MRC that reflects the current state of knowledge of the costs and benefits of Mekong mainstream dams (ICEM, 2010). We also identify several gaps in the SEA report’s data pertaining to human security.

**Economic security**

Economic security refers to the condition of having a stable income or other resources (non-monetary, social safety net) to support a standard of living in the present and the future (UNDP 1994: 25–26). For riparian communities, the economic security of approximately 2,130 people from ten villages could be threatened due to their physical resettlement caused by the project. A further 200,000 people located nearby the project, who would not require physical relocation, could be affected due to impacts on fisheries, and loss of agricultural land and riverbank gardens, gold panning activities, and access to non-timber forest products. The extent that these impacts would affect economic security depends partially upon the quality of livelihood restoration programs offered to communities by the project developer, although these programs often contain high risks for resettled communities, and in general full compensation is not provided for all project impacts for all people affected, especially for those who are not physically resettled. The economic security of some villagers could, however, be temporarily reinforced through gaining employment during the construction period, and the government has promised to provide electricity to some affected riparian communities.

At the national and regional level, economic security is threatened as the reliability of depending upon hydropower for energy security is uncertain due to unpredictable changes in the Mekong River...
hydrology because of climate change and China's dam developments upstream. Overall, the economic benefits of hydroelectricity use versus the costs due to loss of natural resources will be distributed unequally within and between countries, widening inequality. At the same time, the revenues from the project would strengthen the economic security of some actors including the private sector hydropower developers, project financiers, and the government of Lao PDR. The significant FDI of the project could also act as an economic stimulus in Lao PDR. Whilst climate change does add a degree of uncertainty, the energy and economic security of Thailand could also be strengthened as the Xayaburi Dam would diversify Thailand's electricity generation fuel sources, and reduce reliance on fuel imports from outside the Mekong Region. Finally, the dams may improve navigability of the Mekong River for large trading vessels, facilitating trade and economic growth, although at the same time the dam may adversely impact small boats navigating the river.

**Food security**

The Food and Agriculture Organization (1996) defines food security as "when all people at all times have physical and economic access to sufficient, safe and nutritious food to meet their dietary needs and food preferences for an active and healthy life." For riparian communities, the Xayaburi Dam represents a significant risk to food security. If the full upper cascade of six dams that includes the Xayaburi Dam is built, the SEA report predicts changes to aquatic habitats and ecosystems and estimates a loss of wild-capture fisheries of between 270,000 and 600,000 tons per year. Alongside this, the impounded reservoir and changes in river hydrology would result in a loss of river bank gardens and impacts to subsistence agriculture. Replacing lost food sources will be challenging, especially given current institutional weaknesses. These impacts could potentially be experienced basin-wide to a degree, including in Thailand, Cambodia, and Vietnam's Mekong Delta.

**Health security**

Health security exists when there is no threat of poor nutrition and unsafe environment that could cause infectious diseases or undermine health conditions (UNDP, 1994: 27–28). For affected riparian communities, impacts to health security could result from undernour-
ishment, which is a real risk if resettlement and livelihood programs are inadequate. On the other hand, if new infrastructure is provided in the resettlement villages, such as public water supply and clinics, this could improve health security.

Environment security

Environmental security exists when there is a healthy environment that contributes to sustainability and the physical well-being of people (UNDP, 1994: 28–30). Construction of the Xayaburi Dam would result in hydrological changes to the Mekong River affecting its flood-pulse ecosystem, as well as constituting a barrier to major fish migrations. This would result in irreversible ecosystem changes; for example, up to 41 fish species would be at risk of extinction. Furthermore, changes in the movements of sediment carried by the river could increase erosion and affect agricultural soil fertility. Environmental security is an important cross-cutting security affecting economic, food, and health security, as detailed above.

Regarding environmental security benefits, as in general hydro-power dams produce less greenhouse gas emissions compared to fossil-fuel fired power stations, the Xayaburi Dam could contribute towards Thailand’s efforts to mitigate climate change if the alternative is fossil-fuel fired power stations (for an assessment of Thailand’s need for the Xayaburi Dam’s electricity, see below).

Personal security

Personal security means protection from risk of accidents and from violence, including threats from the state, other groups of people, individuals, and gender-related violence (UNDP, 1994: 30–31). For riparian communities, access to and control over natural resources linked to the Mekong River are essential to their livelihoods and way of life. In fundamentally changing the Mekong River, the Xayaburi Dam would result in changes in access to and control over natural resources, including gender differentiated impacts, which would undermine the personal security of riparian community members. Changes in the river hydrology due to dam operation could constitute a safety risk to riverside communities, and climate change may increases the likelihood of extreme weather events, that could surpass the dam’s safety design. Whilst each of these factors is identified in the SEA report, one
additional threat to personal security not named is the risk of violence against community members if they were to oppose the project.

**Community security**

Community security refers both to the importance and value of membership to a group, for example a family, community, or organization, as well as protection against unfavorable traditional practices in the form of discrimination, for example against women or indigenous groups (UNDP, 1994: 31–32). The Xayaburi Dam would result in a number of changes to the river-oriented culture, customs, and values of riparian communities that would hold implications for the existing forms of community security. Furthermore, a number of indigenous communities located in the area would be resettled, and their community security may be at particular risk.

**Political security**

Political security means the protection of an individual’s basic human rights (UNDP, 1994: 32–33). In the current governance context of Lao PDR, access to information and legal justice is restricted, and public participation is limited, such that a lack of sufficient safeguards may place individual rights at risk.

Regarding political security and stability at the regional scale, given that regional institutional arrangements and rules for managing privately operated mainstream hydropower projects are yet to be developed, this could constitute a risk to international cooperation. Furthermore, reduced ecosystem integrity, fisheries and agriculture productivity, and disruption to the existing uses of the Mekong River could create cross-border tensions between the main project beneficiaries and those bearing project impacts. Finally, the migration of people affected by the project internally or across borders could create tensions within recipient populations. On the other hand, deepening regional economic and power sector integration may act as impetus for improved diplomacy between governments.

**Analysis**

The regional and local changes to economic, health, food, and environmental security are largely identified in the SEA report (2010), although they are not conceptualized as human securities, but rather
are categorized analytically as: power systems; economic systems; hydrology and sediment regime; terrestrial systems; aquatic systems; fisheries; social systems; navigation; and climate change.7

The project developer’s own environmental impact assessment and social impact assessment are dated August 2010 (TEAM Consulting, 2010). Whether these documents have been approved by the Government of Lao PDR remains unclear, although a number of weaknesses were raised by civil society (WWF, 2011; International Rivers, 2011) and in a technical review by the Mekong River Commission Secretariat (MRC, 2011). Weaknesses in the EIA and SIA identified by WWF, International Rivers, and the MRC include that the documents do not account for trans-boundary impacts, do not acknowledge the full impact on fisheries, which cannot be mitigated with the currently available technology, and do not adequately assess impacts to local livelihoods.

Assessments conducted to date by the project developer and the MRC have not adequately assessed personal, community, and political securities, although the SEA report does account for key dimensions of these securities. This is not surprising, however, as the issues raised in evaluating these securities are more politically sensitive, and are typically missed in the types of technical assessments presently prepared for hydropower dam development globally.

Whilst the degree of impacts for communities locally will depend in part on the quality of the resettlement and livelihoods programs implemented, extremely complex and dispersed issues, such as increasing human insecurity in neighboring countries due to illegal migration or indirect environmental stress, are not assessed in sufficient detail and therefore neither are they adequately taken into account in the decision-making processes in Lao PDR, Thailand or regionally.

Regional decision-making process on sharing the Mekong River

The Mekong River Commission (MRC), an intergovernmental body whose mandate is to support the sustainable management and development of the Mekong River, has been central to the regional decision-making process to date. As a first response to the proposals for hydropower dams on the Mekong River’s mainstream, the MRC created an “Initiative on Sustainable Hydropower” and commissioned a strategic environmental assessment (SEA) study in May 2009 to
provide an appraisal of the mainstream dams' costs and benefits at a cascade level (ICEM, 2010). The SEA study was published in mid-October 2010 and recommended that decision-making on Mekong mainstream dams be deferred for ten years and that more than 50 additional studies be conducted. The SEA report, however, was not endorsed by all four MRC member countries and therefore did not become an official document of the MRC itself.

Pre-empting the launch of the SEA report, on 22 September 2010, a regional decision-making process on the Xayaburi Dam was initiated by the Government of Lao PDR, called the Procedures for Notification, Prior Consultation and Agreement (PNPCA). The PNPCA process, facilitated by the MRC in accordance with the 1995 Mekong Agreement, requires the four member country governments to notify and consult with their neighbors on proposed mainstream projects. Through the PNPCA process, the Xayaburi Dam was intensely debated between the four Lower Mekong governments themselves, and with civil society, academics, and the wider public, such that on 19 April 2011, in a special joint committee meeting of the MRC, senior bureaucrat government representatives from Cambodia, Lao PDR, Thailand, and Vietnam agreed that a decision on the Xayaburi Dam should be deferred until a ministerial-level MRC council meeting scheduled for October or November 2011. According to a media statement from the MRC, whilst Lao PDR proposed to proceed with the dam, Thailand, Cambodia, and Vietnam called for an extension to the decision-making process, citing concerns about transboundary impacts and knowledge gaps that require both further study and public consultation (MRC, 2011b).

Despite the ongoing intergovernmental regional decision-making process, however, a Bangkok Post report on 17 April 2011 revealed that construction of the road to the dam site had already started; Ch. Karnchang, in their 2010 annual report, stated that work began in late 2010. The Government of Lao PDR classifies this as "pre-construction" activity that does not yet affect the river itself.

Meanwhile, civil society opposition to the Xayaburi Dam has been expressed both regionally and internationally over the past two years through various public forums, petitions, and letters submitted to the regional governments and MRC. For example, on 18 April, a letter from nearly ten thousand Thai villagers from eight provinces was
submitted to the Lao PDR Embassy in Bangkok and the Thai prime minister. An earlier Save the Mekong petition of 23,110 signatures was submitted to the region's prime ministers in October 2009, and in March 2011 a letter from 263 non-governmental organizations to the prime ministers of Lao PDR and Thailand also called for the cancellation of the Xayaburi Dam. There were also public meetings organized through the PNPCA process in January and February 2011 in each MRC-member country apart from Lao PDR, although civil society groups considered these meetings as "information sharing" meetings, as the project's EIA report was not available for comment.

The regional MRC-led decision-making process outlined above has received the most attention from governments, civil society, the media, and the public. As also indicated above, in assessing the EIA and SIA project documents and the SEA report, the human security framework has not been utilized as an evaluation tool either at the project level or regionally. Instead, the discourse and politics of the multiple state and non-state actors, often in heated debate, have focused on the economic, environmental, and social "goods and bads" created by the Xayaburi Dam, and the trade-offs between these goods and bads.

Epitomizing the increasingly unclear regional decision-making process and the politics surrounding it, in July 2011 the Government of Lao PDR issued a letter to the Thai project developer Ch. Karnchang saying that it considered the PNPCA process complete as the time period of PNPCA consultation of six months had expired. Such a letter is required by Ch. Karnchang to proceed with negotiating a power purchase agreement with EGAT (see below). Civil society groups, however, dispute whether this decision is legally permitted, citing a legal opinion by the US law firm Perkins Coie (2011) that concludes:

The Mekong Agreement precludes any unilateral decisions that will severely disrupt the ecological balance of the river or compromise the vital needs of people who rely on it.

Signatories to the Mekong Agreement intended that any individual decision to develop the river would be based on shared priorities, not
unilateral actions that impose unmitigated trans-boundary impacts on other riparian countries.

One party to the Mekong Agreement cannot unilaterally declare for any other government body that the PNPCA process is complete, particularly here where the PNPCA process is not complete.

According to the TNMC, however, as the MRC member governments have now had the opportunity to submit comments to the Government of Lao PDR, the decision whether to proceed with the project now lies with the Government of Lao PDR and the Royal Government of Thailand must respect the principle of sovereignty and non-interference in a neighboring country’s affairs. The principle of sovereignty is a strongly held principle of ASEAN to which both countries are members. Given the anticipated trans-boundary impacts that could affect Thailand, however, the TNMC through the PNPCA process asked (amongst other requests) that a trans-boundary EIA study be prepared, which the Government of Lao PDR has agreed to conduct.

Complicating the intergovernmental decision-making process outlined above with regard to Thailand, whilst the TNMC, chaired by the Minister for natural resources and environment, represents Thailand’s interests diplomatically within the framework of the 1995 Mekong Agreement, the TNMC does not have a direct relationship with the other Thai actors involved, namely EGAT,9 Ch Karnchang, and the Thai banks. The Government of Lao PDR, on the other hand, holds MoUs with both EGAT and Ch Karnchang, and all of these actors have indicated their strong support for the Xayaburi Dam publicly in the media. In addition, given that the MRC itself is an intergovernmental organization, it is questionable whether its mechanisms provide adequate space for other stakeholders, including local communities and civil society groups, to have their voice genuinely heard (Hirsch et al, 2006).

This brief summary of the PNPCA process demonstrates the complexity and limitations of the nation-centric approach to international cooperation on a trans-boundary river in which a large hydropower dam will have cross-border impacts, the electricity will also be traded across borders, and the project itself is FDI from one of the Thai foreign direct investment and human security implications
countries that would experience both positive and negative changes to its human security. International water law is ultimately weak on the sharing of trans-boundary rivers that may be considered common property resources, and yet may also be captured for an individual country’s benefit (Fox and Sneddon, 2005). In the case of the Mekong River, for example, the hydrological flood pulse on which the broader ecosystem productivity depends and the migratory fisheries may be viewed as regional common property resources. These regional common property resources, however, can also be either captured or disrupted by large-scale water infrastructure, such as the Xayaburi Dam, with implications on trans-boundary human securities and international cooperation.

Thailand’s energy policy goals and power development plan

The principles of Thailand’s energy industry’s policy are defined in the Energy Industry Act, B.E. 2550 (2007). Whilst human security is not specifically referred to, section 8(1) states that:

The government should establish the fundamental policy guidelines on energy industry as follows: ... Procure energy to adequately meet the demand, with good quality, reliability as well as reasonable and fair prices, by emphasizing full utilization and development of renewable and domestic energy sources in order to achieve sustainable development, socially, economically and environmentally, as well as to reduce dependency on energy imports from foreign countries.” (Emphasis added)

Thailand’s Power Development Plan (PDP) is prepared by EGAT, a state-owned utility, and describes EGAT’s plans for meeting Thailand’s electricity needs. EGAT states the criteria for preparing the PDP as (EGAT 2010: 11):

System reliability: (Reserve Margin; Power Purchase from Neighboring Countries)

Clean Energy and Efficient Utilization: (Demand Side Management; Electricity Generation from Renewable Energy and Cogen-
It is unclear, however, how these three criteria are applied in practice (Foran et al, 2010), and in our interviews system stability and economic criteria were emphasized as the key criteria for decision-making. The PDP is reviewed by the Ministry of Energy, and required to be approved first by the National Energy Policy Council (see below) and then by Thailand’s Cabinet. Whilst the PDP has in the past been a closed-door process, since 2007 a slight but imperfect increase in transparency and public participation emerged with public hearings now held during the PDP preparation process (Foran et al, 2010).

Civil society groups have questioned Thailand’s PDPs, which they consider to heavily promote the development of new large-scale electricity generation plants, such as fossil-fuel fired power stations and hydropower dams (Greacen and Footner, 2006). They claim that EGAT systematically overestimates demand forecasts resulting in overinvestment in generation capacity, noting that Thailand’s reserve margin is above 20 percent and significantly higher than international standards, and have called on EGAT to prioritize renewable and decentralized energy projects, demand side management and energy efficiency. They have argued that existing plans mostly serve the interests of the state-owned electricity utilities, energy companies, and the construction industry, rather than the needs of the region’s electricity consumers (Greacen and Greacen, 2004).

EGAT responds that the dependability of renewable technologies is unproved and that the risk of underinvestment in generating capacity that could result in economically costly blackouts outweighs the costs of over-investment. EGAT considers the Xayaburi Dam as important to ensuring electricity availability inside Thailand, especially given Thailand’s civil society and community resistance to new large coal, nuclear, and hydropower power projects within the country’s boundaries.
Decision-making processes on power imports in Thailand and the Xayaburi Dam

Decisions on Thailand’s energy policy and plans are approved by the National Energy Policy Council (NEPC), chaired by the prime minister with relevant ministers forming the Council. The secretariat of the NEPC is the Energy Planning and Policy Office of the Ministry of Energy. The National Energy Policy Council Act B.E. 2535 (1992) that established the NEPC does not stipulate the national energy policy goals to guide the NEPC, and therefore neither does not require the NEPC to account for environmental or social considerations or to maximize human security, either in Thailand or regionally.

The Government of Thailand and the Government of Lao PDR presently hold an MoU for power exports from Lao PDR to Thailand of 7000 MW, reflecting the overarching commitment of the two countries’ governments to power trade. To fulfill this commitment, the Government of Lao PDR provides a ranked list of preferred power-export projects to the subcommittee on power imports of Thailand’s NEPC; the criteria that the Government of Lao PDR uses to prioritize the projects that it puts forward for power export are not clear. The NEPC’s subcommittee on power imports, which is chaired by the permanent secretary of the Ministry of Energy and the membership of which is predominantly power-sector government bureaucrats, assesses each proposed project according to whether it meets the electricity system requirements of Thailand and according to its economic cost. The benchmark criterion for the electricity price is that a project must be cheaper than power otherwise produced in Thailand; however, unlike for Independent Power Producer projects in Thailand, no competitive bidding process between alternative power import projects is required by EGAT.

For power import projects initially approved by the NEPC and selected for development, EGAT negotiates an indicative tariff which must also be approved by the subcommittee on power imports, which leads to a more detailed negotiation process for a power purchase agreement with the project developer that must ultimately be approved by the subcommittee on power imports, EGAT’s board of directors, the attorney general, and the NEPC.

The Xayaburi Dam project has been discussed by the NEPC since
at least March 2010, when the NEPC agreed to a draft MoU for electricity purchase and appointed EGAT to sign an initial purchasing agreement with Ch. Karnchang. In July 2010, NEPC approved EGAT to sign an MoU on negotiating a tariff between EGAT and the Lao Government for the Xayaburi Dam for EGAT to buy 1,220 MW at a cost of 2.159 baht/kw hr. On 30 December 2010, the NEPC instructed EGAT that before it could commit to buy electricity from the Xayaburi Dam the project should have successfully completed the MRC’s PNPCA process, and conformed to relevant laws in Thailand on informing the public.

Whilst the above power planning process in Thailand, and in particular the NEPC, offers an opportunity to assess each project from a human security perspective, including cross-border impacts that may affect Thailand, in practice such an assessment is not systematically undertaken and economic cost and system stability are the primary decision-making criteria.

Furthermore, whilst several parliament and Senate committees have raised concerns or stated opposition to the Xayaburi Dam, including the house committee on political development, mass communication and public participation and the Thai Senate subcommittee on Mekong River development, it is unclear how the NEPC has accounted for the issues raised.

**The role of Thailand’s Energy Regulatory Commission**

Thailand’s Energy Regulatory Commission (ERC) was created in 2007 and is responsible for regulating the energy industry and for licensing power projects in the country, as mandated by the Energy Industry Act, B.E. 2550 (2007). The ERC is also responsible for reviewing and monitoring Thailand’s power policy and plans, and is invited to observe relevant NEPC meetings. For power projects located inside Thailand, the ERC sets criteria to issue a license including following the relevant Thai laws on public consultation and environment and health impact assessments. For projects located in neighboring countries that export power to Thailand, however, such as the proposed Xayaburi Dam, the ERC interprets its mandate under the Energy Industry Act that it is not required to monitor the environmental and social performance (or human security impacts) of these
projects, including cross-border impacts that affect Thailand, as it does not have the authority to issue a license in a neighboring country.

**Corporate social responsibility and the Xayaburi Dam**

Whilst EGAT is a state enterprise under the Ministry of Energy, it also has a corporate social responsibility (CSR) policy that incorporates aspects of: environmental responsibility, including following all relevant laws and regulations; stakeholder participation and information disclosure; and social responsibility, where “greater accountability to society and environment is integrated into EGAT’s business strategies and operations” (EGAT, 2009). For power import projects from Lao PDR, however, where EGAT is the electricity purchaser but not the project developer or project owner, EGAT considers it the responsibility of the project developer to follow Lao PDR’s laws, including on environmental and social impacts, and the responsibility of the Government of Lao PDR to enforce its laws.

The lead project developer, Ch. Karnchang, and the four Thai commercial banks that have been named as financiers for the Xayaburi Dam—Kasikorn Bank, Bangkok Bank, Siam Commercial Bank, and Krung Thai Bank—likewise have corporate governance and CSR policies. These commitments vary but include: fair treatment of stakeholders, including customers, investors, business partners, and wider society and the environment; compliance with relevant laws; transparency and information disclosure; and environmental conservation and support for local communities. Whilst these policies represent a positive step to strengthening business practices in Southeast Asia, in practice CSR to date has been interpreted more as the provision of community projects largely independent of business practices rather than more fundamental changes to core business practices, and therefore these CSR policies are yet to be meaningfully implemented.

In the case of Xayaburi Dam, however, whilst initial media reports affirmed the banks’ commitment to the project, in April 2011 Bangkok Bank, Siam Commercial Bank, and Krung Thai Bank mentioned concerns with the project’s consistency with their CSR policies and that the project was still under review (*Post Today*, 25 April 2011). Since these reports, however, the banks have not discussed their position publicly further.
Conclusion: accounting for multi-scaled human security from the Xayaburi Dam

The proposed Xayaburi Dam, whilst reinforcing some dimensions of human security, also entails significant impacts to human security both locally and at the regional scale. The MRC-commissioned Strategic Environmental Assessment report does account for many of these changes to human security, although it does not utilize the human security framework and its findings and recommendations have not been fully integrated into the regional PNPCA decision-making process for the Xayaburi Dam.

Although the Xayaburi Dam and its reservoir’s physical location are wholly within the territory of Lao PDR, Thailand does play a significant role in the project as a member government of the MRC, as the power purchaser (via EGAT), and as the headquarter country of the lead project developer and financiers. Thailand’s NEPC, EGAT, and ERC, however, do not specifically account for human security impacts in Thailand, or in Lao PDR as they defer to the assumption that it is the responsibility of the project developer, Ch Karnchang, to follow the national law to be enforced by the Government of Lao PDR. The MRC functions as a bureaucratic and diplomatic channel of cooperation to share the Mekong River in accordance with the 1995 Mekong Agreement. Through the PNPCA process, Thailand’s National Mekong Committee has flagged the risk of trans-boundary impacts from the Xayaburi Dam and requested Lao PDR to conduct further studies, yet is bound to respect the principles of sovereignty and non-interference, and therefore does not oppose the project itself, as it is wholly located in Lao PDR. Overall, despite the possible human security impacts on Thailand, a full evaluation of the risks and benefits to human security have not been integrated into Thailand’s decision-making process.

Yet, the Xayaburi Dam is located on a trans-boundary river and will have impacts beyond the territory of Lao PDR alone. For FDI projects with regional-scale implications, if local and regional human security is to be maximized, notions of security between Thailand and Lao PDR need to broaden from a traditional state-centric viewpoint to a regional governance perspective that accounts simultaneously for both local and regional human security. Taking the example of the Xaya-
buri Dam, such regional governance requires policies and laws that further democratize Thailand’s power planning process (Sukkumnoed et al, 2007), create greater cooperation between relevant ministries, for example through reforming the NEPC, and deepen commitment by all member governments of the MRC to regional decision-making processes for sharing the trans-boundary Mekong River working in partnership with civil society and with the participation of affected communities.

Moving beyond a nation-centric decision-making framework that emphasizes cost effectiveness to a more holistic and regionalized approach that utilizes analytically the human security framework and incorporates it into agreements—such as the MoU between the Thailand and Lao governments for power exports—could help ensure that the decision-making process acts to strengthen human security and at the same time deepen international cooperation between the countries of the Mekong region.

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Notes

1 Xayaburi is also commonly transliterated as Xayaboury, Sayabouly and Sayaburi.
2 The Xayaburi Dam’s Social Impact Assessment (TEAM, 2010) calculates that 458 households would require resettlement and a further 3,582 households would experience land and income lost, but do not require resettlement.
3 Requests to meet with representatives of the project developer, Ch. Karnchang, the Thai Bank financiers, and the Thailand Export Import Bank were declined.
4 The remaining consortium partner is the Lao company PT Construction and Irrigation (5 percent).
5 EGAT states that “Power import projects stated in PDP 2010 are merely a long term indicative guideline. The actual purchase depends on definite capacity and completion date of each project as well as the appropriate timing and power demand. Above all, it must follow the MOU(s) between the governments.” (EGAT, 2010: 6).
6 Empowerment: Bottom up approach, emphasizes empowerment through demo-
cratic processes; Developing capabilities of individuals to make informed choices and act on their own behalf.

Protection: Top down approach, emphasizes the role of the State to manage threats beyond the individual’s control (natural disaster, financial crisis, conflicts, etc.) and good governance; the State creates protective structures (norms, processes, and institutions).

7 In a synthesis summary, these categories are re-conceptualized as: power generation and security; economic development and poverty alleviation; ecosystem integrity and diversity; fisheries and food security; and social systems, livelihoods and living cultures of affected communities.


9 A representative of the Ministry of Energy does, however, sit on the TNMC, and EGAT is a state enterprise under the Ministry of Energy.

10 EGAT is linked to the Ministry of Energy via its board of directors, whereby the chair of the board of directors is traditionally also the permanent secretary of the Ministry of Energy, although at present the chair of the board is the permanent secretary of Ministry of Science and Technology, previously the permanent secretary of the Ministry of Energy. In addition, EGAT holds a 25 percent share in the energy company EGCO, which holds a 12.5 percent stake in the Xayaburi Dam, and two EGAT board members sit on the board of EGCO. Representatives affiliated with the Ministry of Science and Technology, Ministry of Industry, Ministry of Ministry of Natural Resources and Environment, together with Thailand’s Extraordinary and Plenipotentiary to Laos, also sit on EGAT’s board of directors.

11 Members of the NEPC are: Office of the Prime Minister; Ministry of Defense; Ministry of Finance; Ministry of Foreign Affairs; Ministry of Agriculture and Co-operatives; Ministry of Transport; Ministry of Natural Resources and Environment; Ministry of Energy; Ministry of Commerce; Ministry of Interior; Ministry of Science and Technology; Ministry of Industry; Law Council of State; National Economic and Social Development Board; Bureau of the Budget; Energy Policy and Planning Office.

12 Representatives of National Energy Planning Committee, Office of Permanent Secretary of Ministry of Energy; Ministry of Foreign Affairs; National Economic and Social Development Board; Department of Alternative Energy Development and Efficiency; Office of the Attorney General; EGAT; Provincial Electric Authority; and the Energy Policy and Planning Office.

13 Maximum share of the power import over the system's generating capacity must not exceed 13 percent, 25 percent, 33 percent, and 38 percent from one, two, three, and four countries respectively (EGAT, 2010: 11).

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