IUCN
The World Conservation Union

Mekong Region Water Resources Decision-making

National Policy and Legal Frameworks *vis-à-vis* World Commission on Dams Strategic Priorities

Policy Briefs

Mekong Region Water Resources Decision-making

National Policy and Legal Frameworks *vis-à-vis* World Commission on Dams Strategic Priorities

Mekong Region Water Resources Decision-making

National Policy and Legal Frameworks *vis-à-vis* World Commission on Dams Strategic Priorities

Contributors

Duong Thanh An

Chantho Milattanapheng

Phan Minh Loan

Bantita Pichyakorn

Sam Chamroeun

Yan E

Zhang Jiebin

Editors

Robert A. R. Oliver

Patricia Moore

Kate Lazarus

IUCN
The World Conservation Union

The World Conservation Union gratefully acknowledges the support received from the Swiss Federal Office for the Environment and Oxfam America.

Published by: The World Conservation Union (IUCN), Bangkok, Thailand and Gland, Switzerland.

Citation: Robert A. R. Oliver, Patricia Moore and Kate Lazarus, eds. (2006). *Mekong Region Water Resources Decision-making: National Policy and Legal Frameworks vis-à-vis World Commission on Dams Strategic Priorities*, IUCN, Bangkok, Thailand and Gland, Switzerland. x + 98pp.

ISBN-10: 2-8317-0919-9
ISBN-13: 978-2-8317-0919-2

Cover photo: Attapeu, Lao PDR, Taco Anema, © IUCN

Layout by: Clung Wicha Press Co., Ltd., Bangkok, Thailand

Produced by: Regional Environmental Law Programme and Regional Wetlands and Water Resources Programme, Asia

Printed by: Clung Wicha Press Co., Ltd., Bangkok, Thailand

Available from: The World Conservation Union (IUCN)
Asia Regional Office
63 Sukhumvit Soi 39
Klongtan, Wattana Bangkok, 10110 Thailand
Tel + 66 2 662 4029; fax + 66 2 662 4388
Email: iucn@iucnt.org; www.iucn.org/places/asia/

The text of this book is printed on bond 80 gsm made from chlorine free pulp

Contents

Foreword

How are decisions about water resources development made? This important question is prompted by the continuing global interest in the final report from the World Commission on Dams[1] (WCD), released in 2000, which offered seven strategic priorities[2] as a framework to aid decision-making about large dams and other types of water resources development. As part of their response to the WCD Dams and Development Report, IUCN members and partners in the Mekong Region decided to use the Strategic Priorities as an entry point to a brief review of current frameworks.

During 2002, the World Conservation Union (IUCN) supported dissemination of the *Dams and Development Report* through National Working Groups, translations, and dialogue workshops at national and local levels in Cambodia, Lao PDR and Thailand. In addition, IUCN organised a workshop in Yunnan Province, China.

National Working Groups expressed a high level of interest in getting a regional perspective, and a regional workshop was held in Chiang Mai, Thailand in November 2003 to enable them to meet and share experiences and lessons learned and make recommendations for future action. One of the recommendations was to identify aspects of national legislation and regional agreements that complement the WCD Strategic Priorities as well as the gaps in legal regimes at both national and regional levels.

The Swiss Federal Office for the Environment (formerly the Agency for the Environment, Forests and Landscape) offered seed funding to support a proposed scoping study on the application of the WCD Strategic Priorities in the Mekong Region. With the Swiss contribution as seed funding, IUCN developed the framework for the research and analysis required for the country studies, secured a national expert to prepare the first draft of the China country study, and sought the remaining funding required. The East Asia Regional Office of Oxfam America agreed to provide the funding required to supplement the Swiss contribution.

---

[1] The World Commission on Dams (WCD) was a multi-stakeholder dialogue involving thousands of people around the world, both State and non-State actors, dam builders, and dam opponents. The final WCD report put forward a decision-making framework for “large dams”, or “large water projects and water-related energy projects”. It is a guide, not a blue-print, offered by the commissioners as their contribution to improving water governance. It is considered relevant to hydropower dams, irrigation systems, water diversion schemes and other types of water resources development.

[2] The seven strategic priorities detailed in the WCD report were: 1) gaining public acceptance; 2) comprehensive options assessment; 3) addressing existing dams; 4) sustaining rivers and livelihoods; 5) recognising entitlements and sharing benefits; 6) ensuring compliance; and 7) sharing rivers for peace, development and security. These seven strategic priorities were the starting point for the IUCN Mekong Region country studies. After discussion, the researchers eventually chose to report on six areas: a) recognition and safeguarding of rights and entitlements; b) environmental impact assessment; c) public access to information and public participation in decision-making; d) infrastructure management; 5) compliance; 6) conservation of aquatic ecosystems and biological resources; and 7) shared rivers.

Studies were undertaken in five of the six Mekong Region countries: Cambodia, China, Lao PDR, Thailand and Viet Nam. The objectives were:

- To analyse the extent to which existing national policies and legislation already support the ideas embodied in the WCD Strategic Priorities; and
- To suggest changes to the existing policy and legislative framework in each country that might improve water-related governance.

In addition, an expert on water law in the Mekong Region prepared a study of regional regimes and their relationship with the WCD Strategic Priorities. All of the studies were peer reviewed and subsequently presented for discussion at a regional workshop held in Vientiane, Lao PDR, before being finalised.

The policy briefs presented in this volume were synthesised from the final versions of the national studies. The full text of the national studies and the consolidated report is available on the CD that accompanies this publication.

In all countries, the formal frameworks are evolving. These policy briefs summarise current national frameworks with respect to the WCD Strategic Priorities. The policy briefs are not intended to be comprehensive analyses of the implementation of policies and legal instruments, and it is acknowledged that implementation in many cases needs to be strengthened.

This project is the first, and to IUCN's knowledge the only, in-depth study of regional agreements and national legislation in Mekong riparian countries and their relationship to the Strategic Priorities identified in the WCD *Dams and Development Report*. As such, it is a significant contribution both for its usefulness as a reference now and as a benchmark for future analysis.

We hope that these policy briefs, and the studies on which they are based, serve to inform and enrich the ongoing debates on water governance in the Mekong Region. IUCN reaffirms its commitment to working with our partners in the region to encourage and facilitate these discussions, providing a neutral platform on which all stakeholders can meet.

Aban Marker Kabraji
Regional Director, Asia

Acknowledgements

The project and this publication were made possible by the support of the Swiss Federal Office for the Environment, Oxfam America, and the Water and Nature Initiative of the World Conservation Union (IUCN).

The authors of the five country studies on which the policy briefs in this volume are based are:

Cambodia - Mr. Sam Chamroeun
China - Ms. Yan E
Lao PDR - Mr. Chantho Milattanapheng
Thailand - Dr. Bantita Pichyakorn
Viet Nam - Mr. Duong Thanh An and Ms. Phan Minh Loan

Prof. Zhang Jiebin prepared the regional study as well as the report consolidating the regional and country studies.

Peer reviewers for the national and regional studies included: Mr. Bie Tao; Mr. Mark Dubois; Prof. Le Thac Can; Dr. Nguyen Ngoc Sinh; Mr. Pech Sokhem; Mr. Chinarong Srettthachau; Ms. Latsamay Sylavong.

Mr. Robert A. R. Oliver edited the country studies and, on the basis of them, drafted the policy briefs. The authors of each country study reviewed and revised the national language and English versions of the policy brief based on their work.

IUCN's Regional Environmental Law Programme, Asia, coordinated the project and this publication in cooperation with the Regional Wetlands and Water Resources Programme, Asia.

The IUCN Lao PDR Country Office organised the regional consultation.

Other collaborators whose input has been instrumental in carrying out the project and preparing this publication are Mr. John Dore, Dr. Richard Friend, Ms. Kelsey Jack, Ms. Li Ning, Ms. Duanduan Xie, Mr. Ly Minh Dang, Ms. Dinh Thi Minh Thu, Mr. Mao Kosal, Mr. Sum Touch, Ms. Femy Pinto, Mr. Nouvong Phonsavath, Ms. Qin Liyi, Ms. Pimolwan Singhawong.

Context

The equitable and sustainable use of water is crucial to livelihoods and economic development in the Mekong Region[1]. Millions of local communities are dependent on the fisheries and other products of the river ecosystems. Hydropower is seen by all countries as a logical source of domestic energy or foreign exchange earnings. Irrigated agriculture is expanding throughout the region. For example, there are numerous proposals in Thailand to divert water within and between basins to meet rising demands for water in the rural, urban and industrial sectors. Viet Nam is pursuing water infrastructure projects for electricity generation, flood control, irrigation and salinity management in the Red, Mekong and other major rivers. In China's Yunnan province hydropower cascades and dams in the Nu-Salween and Lancang-Mekong systems are being built or planned to export energy to neighbouring countries as well as China's eastern industrial centres. Lao PDR and Myanmar also have extensive hydropower plans. Cambodia is expanding its own irrigation capacity with some major redevelopments underway. Many of these national water projects are also included in the regional programmes/strategies of the Asian Development Bank (ADB), the Mekong River Commission (MRC), the World Bank, and others.

The World Commission on Dams

In 1997, aware of the social and environmental impacts of dams and the debate with the World Bank surrounding them, The World Conservation Union (IUCN) together with the World Bank helped establish the World Commission on Dams (WCD), a multi-stakeholder process to review the role of dams and development.

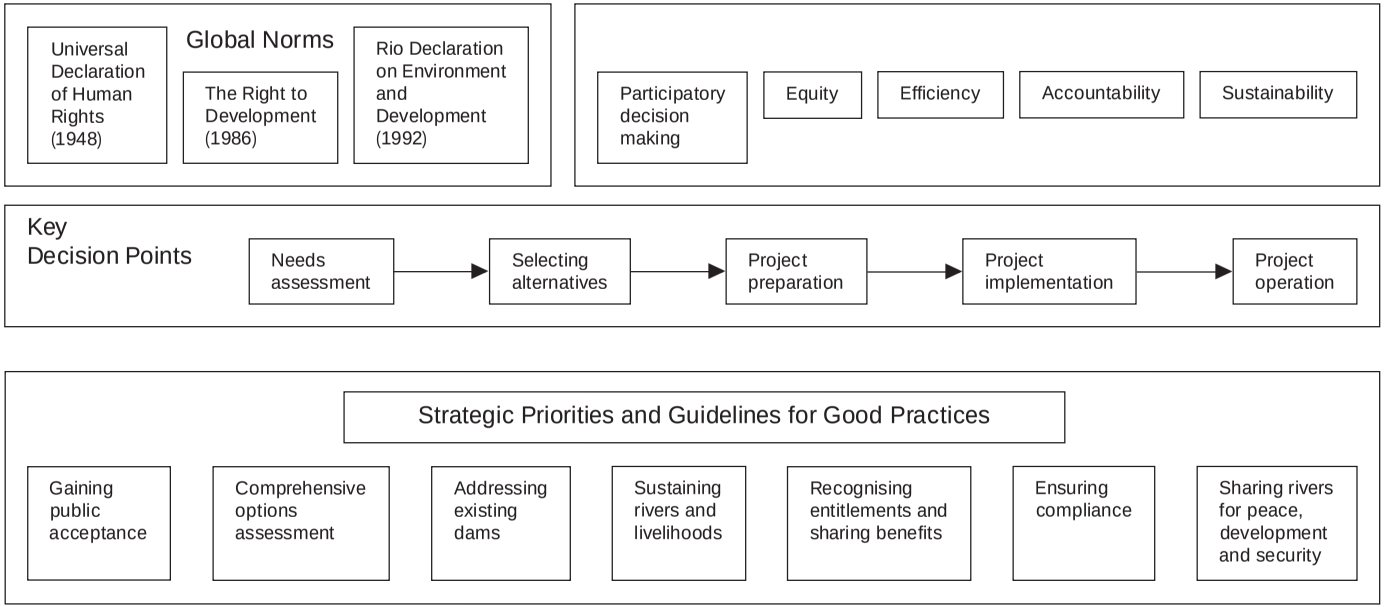
The World Commission on Dams had several objectives. It sought to undertake a global review of the development effectiveness of large dams, and assessments of alternatives. It aimed to create a framework for options assessment and decision-making processes. It also wanted to identify internationally acceptable criteria and guidelines for planning, designing, construction, operation, monitoring and decommissioning of dams.

Since its formulation and release, the "WCD framework" (Figure 1) has been evaluated for use as both an implementation and advocacy tool. The report presents 3 grounding global norms, 5 core values, 5 key decision points, 7 strategic priorities, 33 associated policy principles, and 26 guidelines.

---

[1] The Mekong Region encompasses the territory, ecosystems, people, economies and politics of Cambodia, Lao PDR, Myanmar, Thailand, Viet Nam, and China's Yunnan Province. The territorial area is 2.5 million km^2 which is home to a rapidly growing population of about 300 million people. The major river basins of the region include the Irrawaddy, Salween, Chao Phraya, Mekong, and Red.

Figure 1 WCD framework for decision-making



Source: Chiang Mai University – Unit for Social and Environmental Research summary extract from WCD Dams and Development Report

The seven strategic priorities provide a principled and practical way forward for decision-making[2].

1. Gaining public acceptance

Public acceptance of key decisions is essential for equitable and sustainable water and energy resources development. Acceptance emerges from recognising rights, addressing risks, and safeguarding the entitlements of all groups of affected people, particularly indigenous and tribal peoples, women and other vulnerable groups. Decision-making processes and mechanisms are used that enable informed participation by all groups of people, and result in the demonstrable acceptance of key decisions. Where projects affect indigenous and tribal peoples, such processes are guided by their free, prior and informed consent.

2. Comprehensive options assessment

Alternatives to dams do often exist. To explore these alternatives, needs for water, food and energy are assessed and objectives clearly defined. The appropriate development response is identified from a range of possible options. The selection is based on a comprehensive and participatory assessment of the full range of policy, institutional and technical options. In the assessment process, social and environmental aspects have the same significance as economic and financial factors. The options assessment process continues through all stages of planning, project development and operations.

3. Addressing existing dams

Opportunities exist to optimise benefits from many existing dams, address outstanding social issues and strengthen environmental mitigation and restoration measures. Dams and the context in which they operate are not seen as static over time. Benefits and impacts may be transformed by changes in water use priorities, physical and land use changes in the river basin, technological developments, and changes in public policy expressed in environment, safety, economic and technical regulations. Management and operation practices must adapt continuously to changing circumstances over a project's life and must address outstanding social issues.

---

[2] The following information is extracted from "Dams and Development: A New Framework for Decision-Making", The Report of the World Commission on Dams

4. Sustaining rivers and livelihoods

Rivers, watersheds and aquatic ecosystems are the biological engines of the planet. They are the basis for life and the livelihoods of local communities. Dams transform landscapes and create risks of irreversible impacts. Understanding, protecting and restoring ecosystems at river basin level is essential to foster equitable human development and the welfare of all species. Options assessment and decision-making around river development prioritises the avoidance of impacts, followed by the minimisation and mitigation of harm to the health and integrity of the river system. Avoiding impacts through good site selection and project design is a priority. Releasing tailor-made environmental flows can help maintain downstream ecosystems and the communities that depend on them.

5. Recognising entitlements and sharing benefits

Joint negotiations with adversely affected people result in mutually agreed and legally enforceable mitigation and development provisions. These recognise entitlements that improve livelihoods and quality of life, and affected people become beneficiaries of a project. Successful mitigation, resettlement and development are fundamental commitments and responsibilities of the State and the developer. They bear the onus to satisfy all affected people that moving from their current context and resources will improve their livelihoods. Accountability of responsible parties to agreed mitigation, resettlement and development provisions is ensured through legal means, such as contracts, and through accessible legal recourse at the national and international level.

6. Ensuring compliance

Ensuring public trust and confidence requires that the governments, developers, regulators and operators meet all commitments made for the planning, implementation and operation of dams. Compliance with applicable regulations, criteria and guidelines, and project-specific negotiated agreements is secured at all critical stages in project planning and implementation. A set of mutually reinforcing incentives and mechanisms is required for social, environmental and technical measures. These should involve an appropriate mix of regulatory and non-regulatory measures, incorporating incentives and sanctions. Regulatory and compliance frameworks use incentives and sanctions to ensure effectiveness where flexibility is needed to accommodate changing circumstances.

7. Sharing rivers for peace, development and security

Storage and diversion of water on transboundary rivers has been a source of considerable tension between countries and within countries. As specific interventions for diverting water, dams require constructive co-operation. Consequently, the use and management of resources increasingly becomes the subject of agreement between States to promote mutual self-interest for regional co-operation and peaceful collaboration. This leads to a shift in focus from the narrow approach of allocating a finite resource to the sharing of rivers and their associated benefits in which States are innovative in defining the scope of issues for discussion.

External financing agencies support the principles of good faith negotiations between riparian States. If we are to achieve equitable and sustainable outcomes, free of the divisive conflicts of the past, future decision-making about water and energy resource projects will need to reflect and integrate these strategic priorities and their associated policy principles in the planning and project cycles.

Five years on, the WCD has made its mark as one of the most important multi-stakeholder platforms for discussion and debate on social and environmental implications of large-scale infrastructure development.[3] In addition, considerable progress on the WCD has been made and the WCD's strategic priorities remain a solid and effective frame of reference on which to base such dialogue.

The WCD process of consultation, which involved civil society, government and the private sector, is unparalleled by any current or previous study in its field. Therefore the initial process itself that resulted in the 2000 WCD Dams and Development Report is as important as the discussions and debates that are occurring today, empowering and catalysing local responses to large-scale water initiatives.

The strategic priorities, policy principles and guidelines for best practice for water development are focused and provide a good checklist. They have been well received by the widest range of stakeholders, including a large share of the dam constituency and the media, who have provided numerous and generally positive comments.

---

[3] Although the WCD report focussed predominately on large dams, its recommendations were considered relevant for smaller structures and other water resources infrastructure.

This is evidenced through other important water-related frameworks that have emerged since the release of the WCD report such as the International Hydropower Associations Sustainability Guidelines and Compliance Protocols, the ADB Strategic Environment Framework, the ASEAN Water Resources Management Strategy, and others.

Nevertheless, there has been significant debate about the WCD report and disagreement remains over some of the recommendations and how the report should or could be utilised. According to Achim Steiner, Director General of IUCN, many had hoped that the WCD process and report could resolve the dams debate, but this has not happened. The WCD has, nonetheless, emerged and remained as a touchstone for virtually all stakeholders in the debate.

Cambodia Water Resources Development

A review of the existing policy and legislation framework

Sam Chamroeun[1]

In Cambodia, elements of water resource and dam management are provided for in related plans and policies, such as sector plans for energy, agriculture and environment. Although no specific policy guidelines or regulatory framework for dam management can be found, current plans and policies contain some limited references to developing an adequate policy and regulatory framework for supporting the implementation of the WCD Strategic Priorities.

To date, there have been no significant conflicts regarding the development of water and energy resources because good cooperation exists between line agencies such as the Ministry of Water Resources and Meteorology, the Ministry of Environment, and the Ministry of Industry, Mines and Energy. However, the institutional structure and arrangements in Cambodia are highly compartmentalised and they lack mechanisms for coordination and feedback among key agencies dealing with numerous water resources management activities. In addition, there is no clear definition of the regulatory and development functions.

In Cambodia, national development plans are formulated mainly for five-year periods. Such plans include: the Five-Year Socio-Economic Development Plan, 2001-2005; National Environmental Action Plan, 1998-2002; Rectangular Strategy for Growth, Employment, Equity and Efficiency, 2003-2008; draft Water Policy, 2004; Strategic Plan on Water Resources Management and Development, 2005-2008; and the National Biodiversity Strategy and Action Plan. These policies are supported by the enactment of relevant environmental legislation. Nevertheless, the lack of a clear policy and legislation on dam management, exacerbated by weak compliance with, and enforcement of, existing relevant legislation, remain critical constraints to the sustainable use and conservation of natural resources and biodiversity in Cambodia.

---

[1] Director, Department of Environmental Planning and Legal Affairs, Ministry of Environment, No. 48, Preah Sihanouok Avenue, Chamkarmon, Phnom Penh, Cambodia. E-mail: chamroeunsam@hotmail.com.

In July 2004, the National Assembly adopted a national policy on water resources and irrigation system management by considering it as a part of a broad programme to protect, manage and ensure sustainable exploitation of water resources while enhancing biodiversity and sustainability for equitable public benefit. The objective is to anticipate and prepare for the growing challenges that Cambodia's water resources will face in the next 20 years by adopting relevant measures. These measures will include, inter alia, making clean and safe water available to all citizens, providing adequate water supplies in order to guarantee food security, sustainable economic activities and appropriate living standards, ensuring that water resources and the environment are free from toxic elements, and maintaining a supportive fisheries and ecological system.

The main thrust of Cambodia's draft Water Policy is:

- The promotion of equitable sharing and allocation of water use among key sectors, and the introduction of the laws, regulations, and procedures necessary to achieving these goals. This includes water supply.
- Applying fees and/or issuing licenses for water use by enterprises (i.e., legal persons, entities and factories, etc.), where deemed necessary to conserve water resources, navigation, aquaculture and minimum flows for ecosystem maintenance, and to administer them in a consistent and timely manner;
- Sharing of water during periods of water shortage, normally in the following order: domestic and municipal uses; irrigation; hydropower; and industry and small-scale manufacturing;
- Taking international agreements into account in the use and allocation of water during periods of water shortages in transboundary rivers and streams.

Recognition and safeguarding of rights and entitlements

The Constitution states that the public right to confiscate properties from any person will be exercised only in the public interest as provided for under the law, and that it will require due process with fair and just compensation in advance. These rights are reaffirmed by the Land Law of 2001, which states that the right of ownership applies to all immovable properties within the Kingdom of Cambodia. It also states that no person may be deprived of ownership, unless it is in the public interest. Deprivation of ownership shall be carried out in accordance with the forms and procedures provided by law and regulations, and only after payment of just and equitable compensation. The Land Law also covers rights to the use of water resources.

The Constitution states “Khmer citizens shall have the right to denounce, make complaints or file claims against any breach of the law by State and social organs or by members of such organs committed during the course of their duties. The settlement of complaints and claims shall be the competence of the courts”.

However, Cambodia needs to resolve a number of related issues, identified in the Strategy on Land Policy Framework, including inadequate laws and procedures, a lack of transparency, unclear legally-binding provisions for handling reparation claims for the loss of private land or resources and no provision in existing legislation for a benefit-sharing mechanism, among others.

Environmental impact assessment

Cambodia introduced language, if not the regular practice, of environmental impact assessments (EIAs) in 1995. However, 10 years on, actual experience is limited. A number of challenges still face the Government in the process of developing, screening and reviewing EIA reports.

The Law on Environmental Protection and Natural Resources Management (12 December 1996) states that all projects and activities should be subject to an EIA. However, the Government was of the opinion that this would take too long. For this reason, a list of those projects requiring an Initial EIA (IEIA) and/or EIA was included in the Sub-decree on the EIA Process. All activities included in the list are a potential threat to the environment and are divided into separate categories. For example, the following categories require an IEIA or EIA: (a) hydropower; (b) irrigation systems; (c) port construction; and (d) dredging. However, the Law on Environmental Protection and Natural Resources Management does not define an EIA or describe what it must contain.

The Sub-decree on the EIA Process (11 August 1999) delegates responsibility to the Ministry of Environment for establishing the EIA Guidelines. The Ministry of Environment, in turn, has delegated this responsibility to the Department of Monitoring and Environmental Impact Assessment. Although the Department has yet to issue any EIA Guidelines, two documents are currently being prepared on improving the EIA process: “Environmental Examination Application”; and “Guidelines for Conducting Environmental Impact Assessment Reports.”

Managing and enforcing EIA requirements in Cambodia faces a number of obstacles. First, environmental assessment requirements are not well known, and various sector ministries and project owners are therefore not yet applying them. The authority of the Ministry of

Environment to enforce the requirements appears to be limited by these circumstances. Another problem is the limited capacity within Cambodia to conduct EIAs. There are few in-country specialists with experience of EIA reporting, and international consulting firms often have to be contracted, which is expensive, and does not automatically increase local capacity to do this work.

The need for environmental assessment in Cambodia is still widely considered as secondary to the need for development. The significance of EIAs is not fully recognised by, for example, many of the government ministries responsible for infrastructure or industrial and agricultural development.

Public access to information and public participation in decision-making

The Constitution states that "Khmer citizens of either sex shall have the right to participate actively in the political, economic, social and cultural life of the nation. Any suggestions from the people shall be given full consideration by the grant of the State". However, there is no specific law on broader public participation in the decision-making and planning process for water resources development projects.

The Law on Environmental Protection and Natural Resources Management only provides brief provisions on public participation in the EIA process. It states that "the Ministry of Environment shall, following proposals by the public, provide information on its activities, and shall encourage participation by the public in the environmental protection and natural resource management." This gives the public the right to access information and provide inputs on environmental matters, and the Government is required to issue a sub-decree on procedures for public participation. However, such a sub-decree has yet to be issued.

There is no tradition of public participation in environmental assessment and development planning processes. Due to the lack of a clear procedure for public participation, the public has difficulty in learning how to use the right of access to information as well as participate in decision-making on the protection of the environment and natural resource management. However, the draft EIA Guidelines contain some requirements for public participation. Project sponsors must address all opinions given by the public in the EIA process. Public participation includes (a) all involved local authorities and institutions, (b) public opinion on a development project, (c) consultations and (d) company interpretation.

Public awareness is also recognised in the draft Water Policy of Cambodia. Public understanding and basic knowledge about the benefits of water and the problems caused by water are limited, and the availability of programmes related to water in educational

institutions is inadequate. Moreover, participation by users and stakeholders in protecting, conserving, managing and using water is minimal while the contribution concept and the payment of water service fees remain low.

Participation by indigenous or tribal people is not specifically covered in the Law on Environmental Protection and Natural Resources Management or the Sub-decree on the EIA Process. Although they can exercise their rights like other Cambodian nationals, it is rare to see any representative of indigenous people participating in important decision-making by the Government.

Infrastructure management

Cambodia has yet to formulate and introduce a comprehensive water resources law or a specific law or regulation on irrigation systems or hydropower dams. Institutionally, there are two government agencies that are responsible for water infrastructure asset management—the Ministry of Water Resources and Meteorology, and the Ministry of Industry, Mines and Energy.

The Sub-decree on the Organisation and Functioning of the Ministry of Industry, Mines and Energy (No. 35 ANK-BK, 26 April 1999) lays out the mandates and responsibilities of the ministry, which include but are not limited to: (a) conducting research on the hydropower distribution networks and estimating the potential in order to develop electrical projects where electricity production is the main purpose; and (b) participation in the implementation of any works related to the Mekong Basin according to the obligations of the ministry. The sub-decree also provides clear mandates for monitoring existing hydropower dams, but there is no clear legislative framework for carrying out the monitoring and evaluation process.

The draft Water Policy authorises the Ministry of Water Resources and Meteorology to issue licenses for water use and waterworks construction (dam/irrigation system construction).

Compliance

Legally binding provisions exist that require compliance with plans for constructing and/or operating water infrastructure assets. For example, the draft Water Policy states that licenses for dam construction/irrigation system construction can be revoked by the Ministry when any projects are deemed unsound or likely to cause danger to the nation. The Law on Land Management, Urbanisation and Construction (23 May 1994) states that individuals and private institutions as well as public authorities are banned from conducting construction on land areas such as water reservoirs and water dams.

Compliance with social and environmental commitments, including benefit sharing, is legally binding under the Land Law (30 August 2001).

The Law on Investment (4 August 1994) provides economic incentives for investment in physical infrastructure and energy, and environmental protection. It also states that in a case where a company (investor) violates or fails to comply with the conditions stipulated by the Cambodia Development Council, the Council has the authority to withdraw the privileges and incentives granted, in whole or in part.

Legally-binding provisions have yet to be issued that specify the mechanism for ensuring full implementation of compliance protocols. Currently, should any dispute arise regarding these matters, an *ad hoc* committee or commission can be established to settle the issue. There are no clear specific penalties for non-compliance.

Clear legally-binding measures or specific provisions have yet to be issued for apportioning the costs of compliance, undertaking an external review of implementation and compliance, or discouraging and preventing corruption in the process of constructing and/or operating water infrastructure. Measures or penalties have yet to be introduced to discourage and prevent corruption in the process of constructing and/or operating dams or irrigation systems.

Institutional ineffectiveness (overstaffing, a lack of legitimate incentives for staff, and poor qualifications and technology support) remains a serious problem and must be addressed.

Conservation of aquatic ecosystems and biological resources

A Royal Decree issued on 1 November 1993 established 23 protected areas that total 3.3 million hectares, which amounts to 18 percent of Cambodia's total land area and includes World Heritage sites. Moreover, there are Ramsar Convention sites that cover 53,000 hectares.

The current lack of law enforcement is limiting the effective implementation of biological resource conservation. To date, there is no specific law on protected areas. The Royal Decree on the establishment of protected areas does not provide the Ministry of Environment with a mandate to take legal measures against violators or illegal activities in protected areas.

To ensure the protection and conservation of biological resources as well as aquatic ecosystems in protected areas, the Ministry of Environment implements the provisions of the Law on Environmental Protection and Natural Resource Management and sub-decrees such as the one on water pollution control, in order to protect rivers that flow through those

areas. The Sub-decree on the EIA Process is the most important legal instrument for preventing and mitigating the impact of dams on rivers.

Shared rivers

Cambodia is a Party to the 1995 Mekong Agreement and a member of other regional bodies and initiatives, for example, the Association of South East Asian Nations and the Greater Mekong Sub-region. There are numerous existing and proposed dam projects in the Mekong Region; as a Mekong River basin downstream country, Cambodia is highly vulnerable to upstream dam developments on either the mainstream (such as in China) or on tributaries (such as in Viet Nam). More effective regional river planning and management is required whereby all Mekong countries would strictly adhere to the principle of equitable and reasonable utilisation, a no-harm policy, appropriate consultations, and a joint development and planning process.

Recommendations

Guidelines or principles for project proponents to implement in the process of developing EIAs do not exist. Public awareness of the goal of EIAs is vague. Therefore, the following general goals are recommended for consideration or inclusion in the EIA guidelines or principles:

- Recognise the rights and responsibilities of stakeholders and assess who is voluntarily or involuntarily bearing different risks;
- Incorporate environmental and social criteria in the selection of projects, and demand and supply options before major funds are committed to investigating individual projects;
- Screen out inappropriate or unacceptable projects at an early stage;
- Reduce up-front planning and preparation costs for private investors and minimise the risk that projects will encounter serious opposition due to environmental and social considerations; and
- Provide opportunity to improve the performance of existing dams and other assets from the economic, technical, social and environmental perspectives.

The Government should review existing relevant legislation and regulations, which focus mainly on the protection of water quality from contamination by sources of pollution. The regulatory regime should not only protect water quality and control the quality standards of water resources, but also should protect the rights to access and equitable use of those water resources to ensure sustainable and reasonable use and the conservation of biodiversity.

Public participation in water governance should be specified by law, or at least stated clearly in relevant legislation. Binding provisions on taking into account any recommendations and suggestions received from the public should be specified and implemented. Legitimate ways of gaining public support—many ideas are suggested in the WCD report—should be integrated into the country's policy and institutional framework and practices.

The Government should push through the adoption of the draft Protected Areas Management Law and develop a specific law on dam management to ensure the conservation of the country's biodiversity as well as prevent trans-boundary impact on the biodiversity of neighboring countries. Human resource development and institutional capacity building are also needed, as they are crucial to the implementation of related policies, strategies, and legislation.

Greater investment needs to be made in the development of decision-support tools that will ensure more effective assessments and scientific information decisions (data, information collection and management). Comprehensive options and strategic impact assessments (cumulative effects of various activities, both from within and externally, at the programme and policy levels) need to be put in place. Development requirements and objectives, such as the need for water, food and energy, should be assessed through an open and participatory process.

Once the needs are identified through such a process, the appropriate development response should be selected from a range of possible options. Using the appropriate planning process, a comprehensive and participatory assessment of the full range of policy, institutional and technical options should be carried out in order to select a suitable intervention or combination of interventions. While assessing the various options, social and environmental aspects should be accorded the same high priority as economic and financial factors. In the assessment and selection of interventions, the option of increasing the effectiveness and sustainability of existing water, irrigation and energy systems should be given priority.

Ex post evaluations or post-audit mechanisms need to be institutionalised in order to assess the actual impacts of completed water projects, programmes and policies for the population, environments, and landscapes that are affected

Sponsoring, contracting and financing institutions must adopt a clear, consistent and common set of criteria and guidelines; compliance with the criteria and guidelines must be subject to an independent and transparent review.

ការអភិវឌ្ឍន៍ធនធានទឹកនៃប្រទេសកម្ពុជា
ការពិនិត្យមើលគោលនយោបាយ និងក្របខ័ណ្ឌច្បាប់ដែលមានស្រាប់

ដោយលោក សំ ចំរើន[1]

នៅក្នុងប្រទេសកម្ពុជា ប្រការនានាទាក់ទងនឹងការគ្រប់គ្រងធនធានទឹក និងទំនប់ត្រូវបានចែងនៅក្នុងផែនការ និងគោលនយោបាយពាក់ព័ន្ធ ដូចជាផែនការនានាសម្រាប់វិស័យថាមពល កសិកម្ម និងបរិស្ថាន។ ទោះបីពុំទាន់ឃើញមានគោលការណ៍ណែនាំជាក់លាក់អំពីគោលនយោបាយ រឺក្របខ័ណ្ឌច្បាប់សំរាប់ការគ្រប់គ្រងទំនប់ក៏ដោយ ក៏ផែនការ និងគោលនយោបាយបច្ចុប្បន្ន មានចែងយោងខ្លះៗអំពីការអភិវឌ្ឍន៍ក្របខ័ណ្ឌគោលនយោបាយ និងច្បាប់ឱ្យបានគ្រប់គ្រាន់ សំរាប់គាំទ្រការអនុវត្តន៍អាទិភាព ជាយុទ្ធសាស្ត្ររបស់ WCD ។

មកទល់បច្ចុប្បន្ននេះ នៅពុំទាន់មានចំនាស់ធ្ងន់ធ្ងរនៅឡើយទេ ទាក់ទងនឹងការអភិវឌ្ឍន៍ធនធានទឹក និងថាមពល ដោយសារមានកិច្ចសហប្រតិបត្តិការរវាងស្ថាប័នពាក់ព័ន្ធ ដូចជា ក្រសួងធនធានទឹក និងឧតុនិយម ក្រសួងបរិស្ថាន និងក្រសួងឧស្សាហកម្ម រ៉ែ និងថាមពល។ ទោះជាយ៉ាងណាក៏ដោយ រចនាសម័ន្ធ និងការចាត់ចែងស្ថាប័ននៅក្នុងប្រទេសកម្ពុជា នៅតែមានលក្ខណៈដាច់ដោយឡែកពីគ្នាជាខ្លាំងនៅឡើយ ហើយក្រសួងទាំងនេះខ្វះយន្តការសំរាប់សម្របសម្រួល និងសំរាប់ការផ្តល់យោបល់ឆ្លើយតប ក្នុងចំណោមស្ថាប័នសំខាន់ៗទាក់ទងនឹងសកម្មភាពជាច្រើននៃការគ្រប់គ្រងធនធានទឹក។ លើសពីនេះ ប្រទេសកម្ពុជានៅពុំទាន់មានការកំណត់ច្បាស់នៅឡើយទេ អំពីមុខងារខាងការដាក់បទបញ្ជត្តិ និងខាងការអភិវឌ្ឍន៍។

នៅក្នុងប្រទេសកម្ពុជា ផែនការអភិវឌ្ឍន៍របស់ជាតិត្រូវបានកសាងឡើង សំរាប់រយៈពេលរៀងរាល់ប្រាំឆ្នាំម្តង។ ផែនការបែបនេះរួមមាន: ផែនការអភិវឌ្ឍន៍សេដ្ឋកិច្ច-សង្គមប្រាំឆ្នាំ(២០០១-០៥) ផែនការបរិស្ថានជាតិ(១៩៩៨-២០០២) យុទ្ធសាស្ត្រចតុកោណ ដើម្បីកំណើនការងារ សមធម៌ និងប្រសិទ្ធភាព(២០០៣-២០០៨) សេចក្តីព្រាងគោលនយោបាយទឹក(២០០៤)ផែនការយុទ្ធសាស្ត្រ ស្តីពីការគ្រប់គ្រង និងអភិវឌ្ឍន៍ធនធានទឹក(២០០៥-២០០៨) និងយុទ្ធសាស្ត្រ និងផែនការសកម្មភាពជីវៈចម្រុះជាតិ។ ច្បាប់នានាទាក់ទងនឹងបរិស្ថានបានទទួលការគាំទ្រ ជាបន្ថែមចំពោះគោលនយោបាយទាំងនេះ។ ទន្ទឹមនឹងកង្វះគោលនយោបាយ និងកង្វះច្បាប់ច្បាស់លាស់ស្តីពីការគ្រប់គ្រងទំនប់ ភាពទន់ខ្សោយនៃការគោរពតាម និងភាពទន់ខ្សោយនៃការអនុវត្តន៍ច្បាប់ដែលមានស្រាប់ បានធ្វើឱ្យស្ថានភាពនេះកាន់តែលំបាក ហើយប្រការទាំងនេះនៅតែជាឧបសគ្គចំពោះការប្រើប្រាស់ដោយនិរន្តរភាព និងការអភិរក្សជីវៈចម្រុះនៅក្នុងប្រទេសកម្ពុជា។

---

[1] ប្រធាននាយកដ្ឋានផែនការ និងកិច្ចការច្បាប់ ក្រសួងបរិស្ថាន រុក្ខវិថីព្រះសីហនុ ទន្លេបាសាក់ ខណ្ឌចំការមន ភ្នំពេញ អ៊ីម៉ែល: chamroeunsam@hotmail.com

នៅខែកក្កដា ឆ្នាំ ២០០៤ រដ្ឋសភាជាតិបានអនុម័តគោលនយោបាយជាតិស្តីពីធនធានទឹក និងការគ្រប់គ្រងប្រព័ន្ធធារាសាស្ត្រ ដោយចាត់ទុកថា នេះជាផ្នែកមួយនៃកម្មវិធីធំទូលាយ ដើម្បីការពារ គ្រប់គ្រង និងធានាឱ្យមានការធ្វើអាជីវកម្មធនធានទឹកប្រកបដោយនិរន្តរភាព ទន្ទឹមនឹងការកែលំអជីវៈចម្រុះ និងនិរន្តរភាពសំរាប់ជាផលប្រយោជន៍សាធារណៈប្រកបដោយសមធម៌។ គោលបំណងនៃគោលនយោបាយនេះគឺ ដើម្បីអោយប្រទេសកម្ពុជាគិតទុកជាមុន និងត្រៀមរៀបចំខ្លួន ដើម្បីដោះស្រាយការលំបាក ដែលនឹងកើនឡើងទាក់ទងនឹងធនធានទឹក នៅក្នុងអំឡុងពេល២០ ឆ្នាំខាងមុខ ដោយអនុម័តវិធានការណ៍ពាក់ព័ន្ធ។ វិធានការណ៍ទាំងនេះរួមមាន: ចាត់ចែងឱ្យមានទឹកស្អាតប្រកបដោយសុវត្ថិភាព សំរាប់ប្រជាពលរដ្ឋគ្រប់រូបប្រើប្រាស់ផ្គត់ផ្គង់ទឹកឱ្យបានគ្រប់គ្រាន់ ដើម្បីធានាសន្តិសុខស្បៀង សកម្មភាពសេដ្ឋកិច្ចប្រកបដោយនិរន្តរភាព និងកិរតជីវភាពរស់នៅសមរម្យ ធានាថាធនធានទឹក និងបរិស្ថានមិនក្រខ្វក់ដោយសារវត្តមាននៃសារធាតុពុល និងថែរក្សាការពារប្រព័ន្ធសំរាប់ទ្រទ្រង់ ជលផល និងអេកូឡូស៊ី។

កម្លាំងជម្រុញជាចំបងនៃសេចក្តីព្រាងគោលនយោបាយទឹករបស់ប្រទេសកម្ពុជាគឺ :

- លើកកំពស់ការចែករំលែក និងការបែងចែកទឹកប្រើប្រាស់ប្រកបដោយសមធម៌ ក្នុងចំណោមវិស័យសំខាន់ៗ និងការដាក់ឱ្យប្រើប្រាស់ច្បាប់ បទបញ្ញត្តិ និងនីតិវិធីចាំបាច់ ដើម្បីសំរេចគោលដៅទាំងនេះ។ ប្រការនេះរួមបញ្ចូលទាំងការផ្គត់ផ្គង់ទឹកស្អាតផងដែរ។
- ក្នុងករណីចាំបាច់ ដាក់ឱ្យអនុវត្តយន្តការយកកម្រៃ និង/ឬ ការចេញអាជ្ញាប័ណ្ណសំរាប់ការប្រើប្រាស់ទឹកដោយសហគ្រាសនានា (ពោលគឺ នីតិបុគ្គល និងរោងចក្រ។ល។) ដើម្បីធ្វើការអភិរក្សធនធានទឹក ការធ្វើនាវាចរ វារីវប្បកម្ម និងការរក្សាឱ្យមានលំហូរអប្បបរមា សំរាប់ថែរក្សាប្រព័ន្ធអេកូឡូស៊ី និងដើម្បីចាត់ចែងការប្រើប្រាស់ទាំងនោះឱ្យមានភាពស៊ីសង្វាក់គ្នា និងសមស្របតាមពេលវេលា។
- ចែករំលែកទឹកនៅក្នុងអំឡុងពេលដែលខ្វះទឹក ដែលជាទូទៅសម្រាប់គោលដៅនានា ដូចជាការប្រើប្រាស់តាមលំនៅស្ថាន និងតាមទីក្រុង ការស្រោចស្រព វារីអគ្គិសនី ឧស្សាហកម្ម និងផលិតកម្មខ្នាតតូច។
- ពិចារណាអំពីកិច្ចព្រមព្រៀងអន្តរជាតិ នៅពេលមានការប្រើប្រាស់ និងបែងចែកទឹកនៅក្នុងទន្លេ និងស្ទឹងនានា ដែលហូរឆ្លងព្រំដែននៃប្រទេស ជាពិសេសនៅក្នុងអំឡុងពេលខ្វះទឹក។

ការទទួលស្គាល់ និងរក្សាការពារសិទ្ធិ និងសិទ្ធិអំណាច

រដ្ឋធម្មនុញ្ញចែងថា កម្មសិទ្ធិស្របច្បាប់របស់សាធារណៈជនស្ថិតនៅក្រោមការគាំពារនៃច្បាប់ ហើយការដកហូតកម្មសិទ្ធិពីជនណាមួយបាននោះ លុះត្រាតែប្រយោជន៍សាធារណៈតម្រូវឱ្យធ្វើក្នុងករណីដែលច្បាប់បានបញ្ញត្តិទុក និងត្រូវផ្តល់សំណងជាមុនដោយសមរម្យ និងយុត្តិធម៌។ សិទ្ធិទាំងនេះ ត្រូវបានបញ្ជាក់ឡើងវិញនៅក្នុងច្បាប់ភូមិបាល ឆ្នាំ ២០០១ ដែលចែងថា សិទ្ធិនៃកម្មសិទ្ធិអនុវត្ត ទៅលើអចលនវត្ថុទាំងអស់នៃព្រះរាជាណាចក្រកម្ពុជា។

ច្បាប់នេះក៏ចែងផងដែរថា គ្មានបុគ្គលណាមួយត្រូវបានគេដកហូតសិទ្ធិលើកម្មសិទ្ធិរបស់ខ្លួនបានទេ ប្រសិនបើការដកហូតនោះមិនមែនដើម្បីប្រយោជន៍សាធារណៈ។ ការដកហូតត្រូវធ្វើទៅតាមទម្រង់ និងនីតិវិធីបញ្ញត្តិដោយច្បាប់ និងបទបញ្ជា បន្ទាប់ពីបានផ្តល់សំណងជាមុនដោយសមរម្យ និងយុត្តិធម៌។ ច្បាប់ភូមិបាលក៏ចែងអំពីសិទ្ធិក្នុងការប្រើប្រាស់ធនធានទឹកផងដែរ។

រដ្ឋធម្មនុញ្ញចែងថា "ប្រជាពលរដ្ឋខ្មែរគ្រប់រូបមានសិទ្ធិប្តឹងបរិហារ ប្តឹងតវ៉ា រឺ ប្តឹងទារសំណងជួសជុលការខូចខាតដែលបណ្តាលមកពីអំពើខុសច្បាប់របស់អង្គការរដ្ឋ របស់អង្គការសង្គម និងរបស់បុគ្គលិកនៃអង្គការទាំងនោះ។ ការដោះស្រាយបណ្តឹងតវ៉ា និងសំណងជួសជុលការខូចខាត ជាសមត្ថកិច្ចរបស់តុលាការ"។ ទោះជាយ៉ាងណាក៏ដោយ ប្រទេសកម្ពុជាត្រូវដោះស្រាយបញ្ហាពាក់ព័ន្ធមួយចំនួន ដែលបានកំណត់ឃើញនៅក្នុងយុទ្ធសាស្ត្រស្តីពីក្របខ័ណ្ឌគោលនយោបាយដីធ្លី រួមទាំងភាពពុំគ្រប់គ្រាន់នៃច្បាប់ និងនីតិវិធីកង្វះតម្លាភាពភាពពុំច្បាស់លាស់នៃប្រការនានាដែលទាក់ទងនឹងច្បាប់សំរាប់ដោះស្រាយបណ្តឹងទាក់ទងនឹងសំណងការខូចខាតចំពោះដីធ្លី និងធនធានជាកម្មសិទ្ធិរបស់ឯកជន ហើយពុំមានមាត្រាណាមួយនៅក្នុងច្បាប់ ដែលមានស្រាប់ចែងអំពីយន្តការចែកផលក្នុងចំណោមអ្នកពាក់ព័ន្ធនោះឡើយ។

ការវាយតម្លៃហេតុប៉ះពាល់បរិស្ថាន

ប្រទេសកម្ពុជាបានដាក់ប្រើប្រាស់ជាលើកដំបូងនូវពាក្យ ការវាយតម្លៃហេតុប៉ះពាល់បរិស្ថាន (EIAs) នៅក្នុងឆ្នាំ ១៩៩៥។ ទោះជាយ៉ាងណាក៏ដោយ រយៈពេលជាង ១០ ឆ្នាំ កន្លងមកនេះ បទពិសោធនជាក់ស្តែងក្នុងផ្ទៃកនេះនៅមានកម្រិតកំណត់នៅឡើយ។ មានការលំបាកមួយចំនួន ដែលរដ្ឋាភិបាលកំពុងប្រឈមនៅក្នុងដំណើរការរៀបចំចាត់ចែងជម្រុះ និងពិនិត្យរបាយការណ៍ EIA។

ច្បាប់ស្តីពីកិច្ចការពារបរិស្ថាន និងគ្រប់គ្រងធនធានធម្មជាតិ (ដែលបានអនុម័តនៅថ្ងៃទី១២ ខែធ្នូ ឆ្នាំ ១៩៩៦) ចែងថា ការវាយតម្លៃហេតុប៉ះពាល់បរិស្ថានត្រូវអនុវត្តលើរាល់គម្រោង និងសកម្មភាពទាំងអស់។ ទោះជាយ៉ាងណាក៏ដោយ រដ្ឋាភិបាលយល់ថា ការធ្វើបែបនេះត្រូវការពេលវេលាច្រើនណាស់។

អាស្រ័យហេតុនេះ រដ្ឋាភិបាលបានអនុម័តអនុក្រឹត្យមួយ ស្តីពីដំណើរការ EIA ដោយភ្ជាប់ជាមួយនូវតារាងឧបសម្ព័ន្ធស្តីពីប្រភេទ និងទំហំគម្រោងដែលត្រូវដាក់ឱ្យធ្វើការវាយតម្លៃហេតុប៉ះពាល់បរិស្ថានដំបូង (EIA) និង/រឺ គម្រោងដែលត្រូវដាក់ឱ្យធ្វើការវាយតម្លៃ EIA ។ សកម្មភាពទាំងអស់ដែលរួមបញ្ចូលនៅក្នុងតារាងឧបសម្ព័ន្ធនោះគឺជាបណ្តោសកម្មភាពដែលអាចបង្កជាការគំរាមកំហែងចំពោះបរិស្ថាន និងត្រូវបានចែកចេញជាក្រុនខុសៗគ្នា។ ឧទាហរណ៍: ត្រូវធ្វើការវាយតម្លៃEIA រឺ ចំពោះសកម្មភាព ដូចតទៅនេះ (ក) ទំនប់វារីអគ្គិសនី (ខ) ប្រព័ន្ធស្រោចស្រព (គ) សំណង់កំពង់ផែ និង (ឃ) ការជីកស្តារ ។ ទោះជាយ៉ាងណាក៏ដោយ ច្បាប់ស្តីពីកិច្ចការពារបរិស្ថាន និងការគ្រប់គ្រងធនធានធម្មជាតិ ពុំបានកំណត់អំពីនីតិវិធី EIA រឺ ធ្វើសេចក្តី បកស្រាយថា តើត្រូវមានអ្វីខ្លះនោះទេ។

អនុក្រឹត្យស្តីពីដំណើរការវាយតម្លៃហេតុប៉ះពាល់បរិស្ថាន (ចុះថ្ងៃទី ១១ ខែសីហា ឆ្នាំ ១៩៩៩) បានចែងពីការទទួលខុសត្រូវរបស់ក្រសួងបរិស្ថានលើការបង្កើតគោលការណ៍ណែនាំសំរាប់ EIA ។ ក្រសួងបរិស្ថាន ក៏បានផ្ទេរការទទួលខុសត្រូវនេះជាបន្តទៅនាយកដ្ឋានតាមដាន និងវាយតម្លៃហេតុប៉ះពាល់បរិស្ថាន ។ ទោះបីនាយកដ្ឋាននេះនៅពុំទាន់បានអនុម័តគោលការណ៍ណែនាំស្តីពីEIA ក៏ដោយ មានឯកសារចំនួនពីរកំពុងត្រូវបានរៀបចំ ដើម្បីកែលំអដំណើរការ EIA ដែលមានឈ្មោះថា "ការអនុវត្តន៍ដំណើរការត្រួតពិនិត្យបរិស្ថាន" និង "គោលការណ៍ណែនាំសំរាប់រៀបចំរបាយការណ៍វាយតម្លៃហេតុប៉ះពាល់បរិស្ថាន" ។

ការគ្រប់គ្រង និងពង្រឹងការអនុវត្តន៍តាមលក្ខខណ្ឌនៃ EIA ក្នុងប្រទេសកម្ពុជាប្រឈមនឹងឧបសគ្គមួយចំនួន ។ ទីមួយ លក្ខខណ្ឌនៃការវាយតម្លៃហេតុប៉ះពាល់បរិស្ថាននៅពុំទាន់បានជ្រួតជ្រាបទូលំទូលាយ ហេតុនេះក្រសួងនានា និងម្ចាស់គម្រោងនៅពុំទាន់អនុវត្តតាមលក្ខខណ្ឌនោះនៅឡើយទេ ។ សមត្ថកិច្ចរបស់ក្រសួងបរិស្ថានក្នុងការចាប់បង្ខំឱ្យអនុវត្តតាមលក្ខខណ្ឌទាំងនោះក៏នៅមានកម្រិតកំណត់ ដោយសារកាលៈទេសៈទាំងនេះ ។ បញ្ហាមួយផ្សេងទៀត គឺសមត្ថភាពដែលនៅមានកម្រិតទាបនៅឡើយក្នុងប្រទេសកម្ពុជា ក្នុងការអនុវត្តន៍ដំណើរការ EIA ។ នៅក្នុងប្រទេស មានអ្នកឯកទេសមួយចំនួនតូចតែប៉ុណ្ណោះ ដែលមានបទពិសោធន៍អំពីការរៀបចំរបាយការណ៍EIA អាស្រ័យហេតុនេះ ក្រុមហ៊ុនអន្តរជាតិ ដែលផ្តល់សេវាលើផ្នែក នេះច្រើនតែត្រូវបានជួលឱ្យអនុវត្តការងារនេះ ហេតុនេះត្រូវចំណាយខ្ពស់ និងពុំនាំឱ្យមានការកសាងសមត្ថភាពនៅក្នុងស្រុក ដើម្បីអនុវត្តការងារនេះផងទេ ។

តម្រូវការធ្វើការវាយតម្លៃបរិស្ថាននៅក្នុងប្រទេសកម្ពុជា ភាគច្រើននៅត្រូវបានចាត់ទុកជាអាទិភាពទីពីរធៀបនឹងតម្រូវការអភិវឌ្ឍន៍ ។ សារៈសំខាន់នៃ EIA នៅពុំទាន់បានការទទួលការយកចិត្តទុកដាក់នៅឡើយទេ ដូចជាក្នុងចំណោមក្រសួងជាច្រើនរបស់រដ្ឋាភិបាលដែលទទួលខុសត្រូវលើការអភិវឌ្ឍន៍ហេដ្ឋារចនាសម្ព័ន្ធ រីឧស្សាហកម្ម និងកសិកម្ម ។

ការផ្តល់ព័ត៌មានជាសាធារណៈ និងការចូលរួមជាសាធារណៈនៅក្នុងការធ្វើសេចក្តីសម្រេច

រដ្ឋធម្មនុញ្ញចែងថា "ប្រជាពលរដ្ឋខ្មែរទាំងពីរភេទ មានសិទ្ធិចូលរួមយ៉ាងសកម្មនៅក្នុងជីវភាពនយោបាយ សេដ្ឋកិច្ច-សង្គម និងវប្បធម៌របស់ប្រទេសជាតិ ។ សេចក្តីស្នើទាំងឡាយរបស់ប្រជាពលរដ្ឋត្រូវបានទទួលការពិនិត្យ និងដោះស្រាយយ៉ាងហ្មត់ចត់ពីអង្គការរដ្ឋ" ។ ទោះជាយ៉ាងណាក៏ដោយពុំមានច្បាប់ជាក់លាក់ណាមួយចែងអំពីការចូលរួមឱ្យបានទូលំទូលាយរបស់សាធារណៈជននៅក្នុងការធ្វើសេចក្តីសម្រេច និងក្នុងដំណើរការកសាងផែនការសំរាប់គម្រោងអភិវឌ្ឍន៍ធនធានទឹកឡើយ ។

ច្បាប់ស្តីពីកិច្ចការពារបរិស្ថាន និងការគ្រប់គ្រងធនធានធម្មជាតិ មានចែងដោយខ្លីៗតែប៉ុណ្ណោះ អំពីការចូលរួមជាសាធារណៈនៅក្នុងដំណើរការ EIA ។ ច្បាប់នេះចែងថា " ក្រសួងបរិស្ថានផ្តល់ជូនតាមសំណូមពររបស់សាធារណជននូវព័ត៌មានពីសកម្មភាពរបស់ខ្លួន និងត្រូវលើកទឹកចិត្តឱ្យមានការចូលរួមពីសាធារណជន ក្នុងកិច្ច

ការពារបរិស្ថាន និងការគ្រប់គ្រងធនធានធម្មជាតិ ”។ មាត្រានេះ ផ្តល់ឱ្យសាធារណៈជនន្ូវសិទ្ធិក្នុងការទទួល ព័ត៌មាន និងការផ្តល់យោបល់អំពីកិច្ចការពារបរិស្ថាន ហើយរដ្ឋាភិបាលត្រូវអនុម័តអនុក្រឹត្យស្តីពីនីតិវិធីសំរាប់ ការចូលរួមជាសាធារណៈ។ ទោះជាយ៉ាងណាក៏ដោយ អនុក្រឹត្យបែបនេះនៅពុំទាន់បានអនុម័តនៅឡើយទេ។

ប្រទេសកម្ពុជាពុំទាន់ពង្រឹងអោយបានខ្លាំងអំពីការចូលរួមជាសាធារណៈនៅក្នុងការវាយតម្លៃបរិស្ថាន និងក្នុង ដំណើរការកសាងផែនការអភិវឌ្ឍន៍នៅឡើយទេ។ ដោយសារខ្វះនីតិវិធីច្បាស់លាស់ សំរាប់ការចូលរួមជា សាធារណៈ មានការលំបាកក្នុងការស្វែងយល់អំពីរបៀបប្រើប្រាស់សិទ្ធិក្នុងការទទួលព័ត៌មាន ក៏ដូចជា ក្នុងការ ចូលរួមនៅក្នុងការធ្វើសេចក្តីសម្រេចអំពីកិច្ចការពារបរិស្ថាននិងការគ្រប់គ្រងធនធានធម្មជាតិផងដែរ។ ទោះជា យ៉ាងណាក៏ដោយ សេចក្តីព្រាងគោលការណ៍ EIA មានចែងអំពីលក្ខខណ្ឌខ្លះៗ សំរាប់ឱ្យមានការចូលរួម របស់សាធារណៈជន។ អ្នកឧបត្ថម្ភគម្រោងត្រូវធ្វើការឆ្លើយតបចំពោះរាល់សំណូមពរដែលទទួលបានពី សាធារណជននៅក្នុងដំណើរការ EIA។ ការចូលរួមជាសាធារណៈ រួមបញ្ចូល (ក) អាជ្ញាធរ និងស្ថាប័ន ពាក់ព័ន្ធទាំងអស់នៅមូលដ្ឋាន (ខ) យោបល់របស់សាធារណៈជនអំពីគម្រោងការអភិវឌ្ឍន៍ (គ) ការពិគ្រោះយោបល់ និង(ឃ)ការបកស្រាយរបស់ក្រុមហ៊ុន ។

ការយល់ដឹងជាសាធារណៈក៏ត្រូវបានទទួលស្គាល់ផងដែរនៅក្នុងសេចក្តីព្រាងគោលនយោបាយទឹកនៃ ប្រទេសកម្ពុជា។ ការយល់ដឹងជាសាធារណៈ និងចំណេះដឹងជាមូលដ្ឋានអំពីផលប្រយោជន៍នៃទឹក និង បញ្ហានានាដែលកើតឡើងដោយសារទឹក នៅមានកិរិតទាបនៅឡើយ ហើយកម្មវិធីដែលទាក់ទងនឹង ទឹក ក៏នៅពុំទាន់មានច្រើនគ្រប់គ្រាន់ផងដែរនៅក្នុងគ្រឹះស្ថានអប់រំ។ លើសពីនេះការចូលរួមពីសំណាក់ អ្នកប្រើប្រាស់ និងអ្នកពាក់ព័ន្ធនានាក្នុងកិច្ចការពារអភិរក្ស គ្រប់គ្រង និងប្រើប្រាស់ទឹកមានត្រឹមកម្រិត អប្បបរមា ចំណែកទស្សនៈទានអំពីការរួមវិភាគទាន និងការបង់ថ្លៃលើសេវាប្រើប្រាស់ទឹក ក៏នៅទាប នៅឡើយ។

ការចូលរួមរបស់ប្រជាពលរដ្ឋជាជនជាតិដើម និងជនជាតិភាគតិចក៏ពុំមានចែងនៅក្នុងច្បាប់ ស្តីពីកិច្ចការពារ បរិស្ថាន និងការគ្រប់គ្រងធម្មជាតិ រឺ នៅក្នុងអនុក្រឹត្យស្តីពីដំណើរការ EIA ទេ។ ទោះបីប្រជាពលរដ្ឋទាំងនោះ អាចអនុវត្តសិទ្ធិរបស់ខ្លួន ដូចជាជនជាតិកម្ពុជាដទៃទៀតក៏ដោយ គេកម្រឃើញមានតំណាងរបស់ជនជាតិ ដើមចូលរួមនៅក្នុងការធ្វើសេចក្តីសម្រេចសំខាន់ៗ ដែលធ្វើឡើងដោយរដ្ឋាភិបាល។

ការគ្រប់គ្រងហេដ្ឋារចនាសម្ព័ន្ធ

ប្រទេសកម្ពុជានៅពុំទាន់បានបង្កើត និងដាក់ឱ្យប្រើប្រាស់ច្បាប់ដែលចែងលំអិតអំពីធនធានទឹក រឺ ច្បាប់ រឺ បទ បញ្ជាជាក់លាក់ណាមួយអំពីប្រព័ន្ធស្រោចស្រព រឺ ទំនប់វារីអគ្គិសនីឡើយ។ ជាគោលការណ៍ មានស្ថាប័នចំនួន ពីររបស់រដ្ឋាភិបាល ដែលទទួលខុសត្រូវលើការគ្រប់គ្រងហេដ្ឋារចនាសម្ព័ន្ធទឹក ពោលគឺក្រសួងធនធានទឹក និងឧតុនិយម និងក្រសួងឧស្សាហកម្ម រ៉ែ និងថាមពល។

អនុក្រឹត្យស្តីពីការបង្កើត និងការប្រព្រឹត្តទៅនៃក្រសួងឧស្សាហកម្ម រ៉ែ និងថាមពល (លេខ ៣៥ អនក្រប្រក ចុះថ្ងៃទី២៦ ខែមេសា ឆ្នាំ ១៩៩៩) ចែងអំពីអាណត្តិ និងការទទួលខុសត្រូវនៃក្រសួងនេះ ដែលរួមមាន (ក) ធ្វើការស្រាវជ្រាវអំពីបណ្តាញចែកចាយថាមពលវារីអគ្គិសនី និងធ្វើការប៉ាន់ប្រមាណអំពីសក្តានុពលវារីអគ្គិសនី ដើម្បីអភិវឌ្ឍន៍គម្រោងអគ្គិសនី ក្នុងករណីដែលការផលិតអគ្គិសនីគឺជាគោលបំណងចំបង និង (ខ) ចូលរួមក្នុង ការអនុវត្តន៍ការងារដែលទាក់ទងនឹងអាងទន្លេមេគង្គ អនុលោមតាមការទទួលខុសត្រូវរបស់ក្រសួង។ អនុក្រឹត្យនេះក៏ចែងច្បាស់ផងដែរ អំពីអាណត្តិក្នុងការតាមដានទំនប់វារីអគ្គិសនីដែលមានស្រាប់ ប៉ុន្តែពុំមាន ក្របខ័ណ្ឌច្បាប់ច្បាស់លាស់សំរាប់អនុវត្តដំណើរការតាមដាន និងវាយតម្លៃនោះឡើយ។

សេចក្តីព្រាងគោលនយោបាយទឹក ផ្តល់អំណាចដល់ក្រសួងធនធានទឹក និងឧតុនិយម ក្នុងការចេញអាជ្ញាប័ណ្ណ លើការប្រើប្រាស់ទឹក និងការសាងសង់បណ្តាញចែកចាយទឹក (ការសាងសង់ទំនប់ /ប្រព័ន្ធស្រោចស្រព)។

ការអនុវត្តន៍តាម

មានមាត្រាដែលចែងអំពីការតម្រូវឱ្យអនុវត្តតាមផែនការនានាសំរាប់ការសាងសង់ និង/រឺដាក់ឱ្យដំណើរការ នូវហេដ្ឋារចនាសម្ព័ន្ធទឹក។ ឧទាហរណ៍: សេចក្តីព្រាងគោលនយោបាយទឹកចែងថា ក្រសួងអាចដកហូត អាជ្ញាប័ណ្ណសំរាប់ការសាងសង់ទំនប់ រឺអាជ្ញាប័ណ្ណសាងសង់ប្រព័ន្ធទឹក នៅពេលឃើញថា គម្រោងមិនសម ស្រប រឺ ទំនងជាបង្កគ្រោះថ្នាក់ចំពោះប្រទេសជាតិ។ ច្បាប់ស្តីពីការរៀបចំដែនដី នគរូបនីយកម្ម និងសំណង់ (ចុះថ្ងៃទី ២៣ ខែឧសភា ឆ្នាំ ១៩៩៤) ចែងថាបុគ្គល រឺ គ្រឹះស្ថានឯកជន ក៏ដូចជា ស្ថាប័នសាធារណៈត្រូវបាន ហាមឃាត់មិនឱ្យធ្វើការសាងសង់នៅលើចំណែកដី ដូចជា អាងទឹក និងទំនប់ទឹក។

ការគោពតាការប្តេជ្ញាខាងផ្នែកសង្គម និងបរិស្ថាន រួមទាំងការចែកផល គឺជាកាតព្វកិច្ចខាងផ្លូវច្បាប់ ដែលមាន ចែងនៅក្នុងច្បាប់ភូមិបាល (ចុះថ្ងៃទី៣0 ខែសីហា ឆ្នាំ ២00១)។

ច្បាប់ស្តីពីការវិនិយោគ (ចុះថ្ងៃទី 0៤ ខែ សីហា ឆ្នាំ ១៩៩៤) ផ្តល់ការលើកទឹកចិត្តខាងផ្នែកសេដ្ឋកិច្ច សំរាប់ ការវិនិយោគលើហេដ្ឋារចនាសម្ព័ន្ធរូបវ័ន្ត និងថាមពល និងកិច្ចការពារបរិស្ថាន។ ច្បាប់នេះ ក៏ចែងដែរថា ក្នុងករណី ក្រុមហ៊ុន (អ្នកវិនិយោគ) រំលោភ រឺ មិនអនុវត្តតាមលក្ខខណ្ឌដែលមានចែងដោយក្រុមប្រឹក្សាអភិវឌ្ឍន៍កម្ពុជា ក្រុមប្រឹក្សានេះមានអំណាចធ្វើការកាត់បន្ថយ រឺ ដកហូតទាំងស្រុងនូវសិទ្ធិ និងលើកទឹកចិត្ត ដែលបានផ្តល់ជូន។

បច្ចុប្បន្ន នៅពុំទាន់មានចែងនៅក្នុងច្បាប់នៅឡើយទេ អំពីយន្តការសំរាប់ធានាថា ការអនុវត្តន៍គោរពទៅ តាមពិធីសារនៃកិច្ចព្រមព្រៀង។ បច្ចុប្បន្ន ប្រសិនបើមានទំនាស់កើតឡើងទាក់ទងនឹងប្រការនេះ គណៈកម្មការ បណ្តោះអាសន្នមួយអាចនឹងត្រូវបង្កើតឡើងដើម្បីដោះស្រាយបញ្ហានេះ។ ពុំមានចែងច្បាស់អំពីការដាក់ទណ្ឌកម្ម ជាក់លាក់ទាក់ទងនឹងការមិនអនុវត្តតាមកិច្ចព្រមព្រៀងនានាឡើយ។

ពុំទាន់មានវិធានការណ៍គតិយុត្តិ រឺ មានចែងជាក់លាក់នៅឡើងទេ អំពីការបែងចែកចំណូលបានពីការផាក

ពិន័យពីការមិនគោរពតាម ការត្រួតពិនិត្យដោយភាគីពីខាងក្រៅទៅលើការងារអនុវត្ត និងការអនុវត្តន៍តាម រឺ ការ កាត់បន្ថយ រឺទប់ស្កាត់អំពើពុករលួយនៅក្នុងដំណើរការនៃការសាងសង់ និង/រឺ នៅក្នុងដំណើរការនៃហេដ្ឋារចនាសម្ព័ន្ធទឹកឡើយ។ វិធានការណ៍ និងការដាក់ទណ្ឌកម្ម ក៏នៅពុំទាន់ដាក់ឱ្យអនុវត្តនៅឡើយទេ ដើម្បីកាត់បន្ថយ រឺ ទប់ស្កាត់អំពើពុករលួយនៅក្នុងដំណើរការនៃការសាងសង់ និង/រឺ នៅក្នុងការដាក់ឱ្យដំណើរការទំនប់ រឺ ប្រព័ន្ធស្រោចស្រពៗ

ប្រសិទ្ធភាពទាបនៅក្នុងស្ថាប័ន (បុគ្គលិកចំនួនច្រើនលើសលុប កង្វះការលើកទឹកចិត្តដល់បុគ្គលិក ក៏រឹតទាបខាងសមត្ថភាព និងខាងការគាំទ្របច្ចេកវិទ្យា) នៅតែជាបញ្ហាធ្ងន់ធ្ងរ និងទាមទារឱ្យមានការដោះស្រាយ។

ការអភិរក្សប្រព័ន្ធអេកូឡូស៊ីដែនទឹក និងធនធានជីវសាស្ត្រ

ព្រះរាជក្រឹត្យចុះថ្ងៃទី ០១ ខែវិច្ឆិកា ឆ្នាំ១៩៩៣ បានបង្កើតតំបន់ការពារធម្មជាតិចំនួន២៣កន្លែង លើវិសាលភាពសរុប ៣.៣ លានហិកតា ដែលត្រូវជាប្រមាណ ១៨% នៃផ្ទៃដីប្រទេសកម្ពុជាទាំងមូល និងមានរួមបញ្ចូលតំបន់បេតិកភណ្ឌពិភពលោកផងដែរ។ លើសពីនេះ មានការកំណត់ទីតាំងតំបន់វាមសារ ដែលមានវិសាលភាពសរុប ៥៣.០០០ ហិកតាផងដែរ។ កង្វះការអនុវត្តន៍ច្បាប់នៅក្នុងពេលបច្ចុប្បន្ននេះ បានក្លាយជាឧបសគ្គក្នុងការអនុវត្តន៍ការងារអភិរក្សធនធានជីវៈចម្រុះឱ្យមានប្រសិទ្ធភាព។ មកទល់បច្ចុប្បន្ននេះ ពុំមាន ច្បាប់ជាក់លាក់នៅឡើយទេដែលចែងអំពីតំបន់ការពារធម្មជាតិ ។ ព្រះរាជក្រឹត្យស្តីពីការបង្កើតតំបន់ការពារធម្មជាតិ ពុំបានចែងឱ្យក្រសួងបរិស្ថានមានអំណាច ដើម្បីចាត់វិធានការណ៍តាមផ្លូវច្បាប់ជនល្មើស រឺ សកម្មភាពល្មើសច្បាប់នៅក្នុងតំបន់ការពារធម្មជាតិឡើយ។

ដើម្បីធានាឱ្យមានកិច្ចការពារ និងអភិរក្សធនធានជីវៈចម្រុះ ក៏ដូចជាប្រព័ន្ធអេកូឡូស៊ីនៃដែនទឹកនៅក្នុងតំបន់ការពារធម្មជាតិ ក្រសួងបរិស្ថានបានអនុវត្តតាមមាត្រានានានៃច្បាប់ស្តីពីកិច្ចការពារបរិស្ថាន និងការគ្រប់គ្រងធនធានធម្មជាតិ និងអនុក្រឹត្យនានា ដូចជា អនុក្រឹត្យស្តីពីការត្រួតពិនិត្យការបំពុលទឹក ដើម្បីការពារទន្លេដែលហូរកាត់តំបន់ការពារធម្មជាតិ។ អនុក្រឹត្យស្តីពីដំណើរការវាយតម្លៃហេតុប៉ះពាល់បរិស្ថាន គឺជាបរិធានច្បាប់ ដ៏សំខាន់សំរាប់ទប់ស្កាត់ និងកាត់បន្ថយផលប៉ះពាល់នៃទំនប់នានាទៅលើទន្លេ។

ការចែករំលែកការប្រើប្រាស់ទន្លេរួម

កម្ពុជាគឺជាភាគីសមាជិកនៃកិច្ចព្រមព្រៀងទន្លេមេគង្គឆ្នាំ ១៩៩៥ និងជាសមាជិកនៃអង្គការប្រចាំតំបន់ ដូច ជាសមាគមប្រជាជាតិអាស៊ីអាគ្នេយ៍ និងមហាអនុតំបន់ទន្លេមេគង្គ។ មានគម្រោងជាច្រើន ដែលមានស្រាប់ និងដែលបានស្នើឡើងជាថ្មីនៅក្នុងតំបន់ទន្លេមេគង្គ។ ក្នុងនាមជាប្រទេសនៅខ្សែទឹកខាងក្រោមអាងទន្លេមេគង្គ ប្រទេសកម្ពុជាងាយរងគ្រោះជាទីបំផុតបណ្តាលពីសកម្មភាពអភិវឌ្ឍន៍ទំនប់នៅខ្សែទឹកខាងលើ ទោះជាទំនប់នោះសង់នៅលើផ្លូវទឹកមេ (ដូចជាក្នុងប្រទេសចិន) រឺ នៅលើដែនទន្លេ (ដូចជា ក្នុងប្រទេសវៀតណាម) ក្តី។

ប្រការចាំបាច់គឺត្រូវមានការកសាងផែនការ និងការគ្រប់គ្រងទន្លេឱ្យមានប្រសិទ្ធភាពជាងមុន នៅកម្រិតតំបន់ ដោយប្រទេសនៅតាមដងទន្លេមេគង្គត្រូវគោរពតាមគោលការណ៍នៃការប្រើប្រាស់ដោយសមធម៌ និងប្រកបដោយវិចារណញ្ញាណ គោរពគោលនយោបាយមួយ ដែលគ្មានគ្រោះថ្នាក់ ការពិគ្រោះយោបល់សមរម្យ និងដំណើរការរួមគ្នាសំរាប់កសាងផែនការ និងការអភិវឌ្ឍន៏។

អនុសាសន៏

បច្ចុប្បន្ននៅពុំទាន់មានគោលការណ៍ណែនាំ រឺ គោលការណ៍សម្រាប់ម្ចាស់គម្រោងអនុវត្តក្នុងដំណើរការកសាងរបាយការណ៍ EIAs នៅឡើយទេ។ ការយល់ដឹងជាសាធារណៈអំពីគោលដៅនៃ EIAs នៅមានមានកំរិត។ អាស្រ័យហេតុនេះ យើងលើកស្នើនូវអនុសាសន៏អំពីគោលដៅទូទៅសំរាប់យុទ្ធសាស្ត្រនៃ EIAs សំរាប់ធ្វើការពិចារណា និងដាក់បញ្ចូលទៅក្នុងគោលការណ៍ណែនាំ រឺគោលការណ៍នានា:

- ទទួលស្គាល់សិទ្ធិ និងការទទួលខុសត្រូវរបស់អ្នកពាក់ព័ន្ធនានា និងធ្វើការវាយតម្លៃអំពីអ្នក ដែលត្រូវរងហានិភ័យខុសៗគ្នា ទោះការប្រឈមហានិភ័យនោះជាការទទួលដោយស្ម័គ្រចិត្ត រឺ មិនស្ម័គ្រចិត្តក្តី ។
- ដាក់បញ្ចូលលក្ខណៈវិនិច្ឆ័យបរិស្ថាន និងសង្គមទៅក្នុងការជ្រើសរើសគំរោង និងតំរូវការធ្យៃបនឹងការផ្តត់ផ្តង់ មុននឹងធ្វើការប្តេជ្ញាផ្តល់មូលនិធិចំបង។ សំរាប់ស្រាវជ្រាវអំពីគំរោងណាមួយ ។
- សិក្សាជម្រុះតាំងពីក្នុងដំណាក់កាលដើមដំបូងនូវគម្រោងណាដែលមិនសមស្រប រឺ ដែលមិនអាចទទួលយកបាន។
- កាត់បន្ថយការចំណាយជាមុនរបស់អ្នកវិនិយោគឯកជន លើការកសាងផែនការ និងការរៀបចំ និងកាត់បន្ថយហានិភ័យ ដែលគម្រោងអាចប្រឈមនឹងមតិជំទាស់យ៉ាងតឹងតែង ដោយសារការពិចារណាអំពីកត្តាបរិស្ថាន និងសង្គម។ និង
- ផ្តល់កាលានុវត្តភាពដើម្បីកែលំអដំណើរការរបស់ទំនប់ដែលមានស្រាប់ និងហេដ្ឋារចនាសម្ព័ន្ធផ្សេងទៀត ដោយផ្អែកលើទស្សនៈវិស័យខាងផ្អែកសេដ្ឋកិច្ច បច្ចេកទេស សង្គម និងបរិស្ថាន។

រដ្ឋាភិបាលគួរធ្វើការពិនិត្យឡើងវិញនូវច្បាប់ និងបទបញ្ញត្តិដែលមានស្រាប់ ដែលផ្តោតចំបងលើកិច្ចការពារគុណភាពទឹកឱ្យចាកផុតពីភាពក្រខ្វក់ដោយសារប្រភពបំពុលនានា។ បទបញ្ញត្តិនានាគួរចែង មិនត្រឹមតែអំពីកិច្ចការពារគុណភាពទឹក និងការត្រួតពិនិត្យតាមស្តង់ដាគុណភាពទឹក ដែលប្រើប្រាស់ប៉ុណ្ណោះទេ ប៉ុន្តែត្រូវចែងផងដែរ អំពីកិច្ចការពារសិទ្ធិលើការប្រើប្រាស់ដោយសមធម៌នូវធនធានទឹកទាំងនោះ ដើម្បីធានាថាមានការប្រើប្រាស់ដោយនិរន្តរភាព និងដោយវិចារណញ្ញាណ ព្រមទាំងមានការអភិរក្សជីវៈចម្រុះផងដែរ។

គួរមានចែងការចូលរួមជាសាធារណៈនៅក្នុងអភិបាលកិច្ចទឹកនៅក្នុងច្បាប់មួយដោយឡែក រឺ យ៉ាងហោចណាស់គួរមានចែងច្បាស់លាស់នៅក្នុងច្បាប់ពាក់ព័ន្ធ។ គួរមានចែងបញ្ជាក់ និងអនុវត្តនូវរាល់មាត្រា ដែលមានចែងនៅក្នុងច្បាប់ដោយពិចារណាផងដែរអំពីអនុសាសន៏នានា និងយោបល់ ដែលទទួបានពីសាធារណជន។ គំនិតជាច្រើនត្រូវបានផ្តល់នៅក្នុងរបាយការណ៍របស់WCD អំពីវិធីស្របច្បាប់សំរាប់ទទួលការគាំទ្រ ជាសាធារណៈ:

ដោយគួរដាក់បញ្ចូលទៅក្នុងគោលនយោបាយ និងក្របខ័ណ្ឌស្ថាប័ន និងការអនុវត្តន៍របស់ប្រទេស ។
រដ្ឋាភិបាលគួរជុំរុញឱ្យមានការអនុម័តលើសេចក្តីព្រាងច្បាប់ ស្តីពីការគ្រប់គ្រងតំបន់ការពារធម្មជាតិ និងកសាងច្បាប់ដោយឡែកអំពីការគ្រប់គ្រងទំនប់ ដើម្បីធានាការអភិរក្សជីវៈចម្រុះនៅក្នុងប្រទេស ក៏ដូចជាទប់ស្កាត់ផលប៉ះពាល់ដែលមានលក្ខណៈឆ្លងដែន ទៅលើជីវៈចម្រុះនៅក្នុងប្រទេសជិតខាង ។ ក្រៅពីនេះ ក៏ត្រូវកសាងធនធានមនុស្សនិងសមត្ថភាពស្ថាប័ន ព្រោះថា កត្តាទាំងពីរនេះមានសារៈសំខាន់ណាស់សំរាប់អនុវត្តគោលនយោបាយ

យុទ្ធសាស្ត្រ និងច្បាប់នានាដែលពាក់ព័ន្ធ ។
ត្រូវធ្វើការវិនិយោគច្រើនជាបន្ថែមទៀតលើការបង្កើតបរិធានគាំទ្រសេចក្តីសម្រេច ដែលធានាឱ្យមានការវាយតម្លៃប្រកបដោយប្រសិទ្ធភាពខ្ពស់ជាងមុន និងដែលធានាឱ្យមានសេចក្តីសម្រេច ដែលផ្អែកលើព័ត៌មានវិទ្យាសាស្ត្រ (ទិន្នន័យ ការប្រមូល និងគ្រប់គ្រងព័ត៌មាន) ។ ត្រូវដាក់ឱ្យអនុវត្តជម្រើសជាច្រើនមុខ និងការវាយតម្លៃផលប៉ះពាល់ជាយុទ្ធសាស្ត្រ (ឥទ្ធិពលត្រួតគ្នានៃសកម្មភាពនានា ទាំងនៅក្នុង និងមកពីក្រៅគំរោងនៅកម្រិតកម្មវិធី និងគោលនយោបាយ) ។ គួរធ្វើការវាយតម្លៃតាមរយៈដំណើរការ ដែលមានលក្ខណៈបើកចំហ និងមានការចូលរួមអំពីតម្រូវការ និងគោលបំណងនៃការអភិវឌ្ឍន៍ ដូចជាតម្រូវការទឹក ស្បៀង និងថាមពល ។

នៅពេលដែលមានការធ្វើអត្តសញ្ញាណរួចហើយ អំពីតម្រូវការតាមរយៈដំណើរការបែបនេះ គួរធ្វើការជ្រើសរើសវិធានការឆ្លើយតបសំរាប់ការអភិវឌ្ឍន៍ពីក្នុងចំណោមជម្រើសជាច្រើន ដែលអាចធ្វើ ទៅបាន ។ ដោយប្រើប្រាស់ដំណើរការកសាងផែនការសមស្រប គួរអនុវត្តការវាយតម្លៃលំអិត និងដោយមានការចូលរួមនូវជម្រើសនានានៃគោលនយោបាយ ស្ថាប័ន និងបច្ចេកទេស ដើម្បីជ្រើសរើសយកអន្តរាគមន៍ សមស្រប រឹ បន្សំនៃអន្តរាគមន៍ជាច្រើន ។ ក្នុងពេលវាយតម្លៃជំរើសនានា គួរយកចិត្តទុកដាក់អំពីទិដ្ឋភាពសង្គម និងបរិស្ថានឱ្យដូចជាអាទិភាពខាងកត្តាសេដ្ឋកិច្ច និងហិរញ្ញវត្ថុផងដែរ ។ នៅក្នុងការវាយតម្លៃ និងជ្រើសយកជម្រើសអន្តរាគមន៍ គួរផ្តល់អាទិភាពដល់ជំរើស ដែលនាំឱ្យមានកំណើនប្រសិទ្ធភាព និងនិរន្តរភាពប្រព័ន្ធទឹក ប្រព័ន្ធស្រោចស្រព និងប្រព័ន្ធថាមពល ។

ត្រូវចាត់ចែងអោយមានជាផ្លូវការនូវយន្តការវាយតម្លៃធ្វើឡើងដោយស្ថាប័នឯករាជ្យពីខាងក្រៅ នៅក្រោយពេលអនុវត្ត និងនៅក្រោយពេលធ្វើសវនកម្ម ដើម្បីវាយតម្លៃឥទ្ធិពលជាក់ស្តែងទៅលើប្រជាជន បរិស្ថាន និងតំបន់ទេសភាព ដែលរងគ្រោះបណ្តាលពីគម្រោងកម្មវិធី និងគោលនយោបាយទឹក ដែលបានសាងសង់ រឺ អនុវត្តរួចហើយ ។

ស្ថាប័នដែលផ្តល់ការឧបត្ថម្ភ ក្រុមហ៊ុនម៉ៅការ និងស្ថាប័នដែលផ្តល់ហិរញ្ញប្បទានត្រូវអនុម័តលក្ខណៈវិនិច្ឆ័យ និងគោលការណ៍ណែនាំច្បាស់លាស់ ដែលមានសង្គត់ភាព និងរួមគ្នា ហើយត្រូវមានការត្រួតពិនិត្យដោយស្ថាប័នឯករាជ្យ និងប្រកបដោយតម្លាភាពអំពីភាពតឹងរឹតនៃការគោរពតាមលក្ខណៈវិនិច្ឆ័យ និងគោលការណ៍ណែនាំទាំងនោះ ។

China Water Resources Development

A review of the existing policy and legislation framework

Yan E[1]

In general, the existing legal and policy framework of China conforms to WCD recommendations, and reflects the visions, perspectives and procedures for complying with the WCD Strategic Priorities. There are no direct or indirect conflicts between the existing policy and legislative framework and any element of the Strategic Priorities for the development of water and energy resources.

Based on specific Chinese conditions, the current systems—including environmental impact assessment (EIA) and public participation in decision-making on water-related issues—need to be improved and expanded. More attention will need to be given to improving the capacity to implement and comply with existing laws and policies.

Recognition and safeguarding of rights and entitlements

In China, water resources are owned by the State. The State Council exercises the right of ownership on behalf of the State. The State encourages units and individuals to lawfully exploit and utilise water resources and protect their legitimate usage rights. The types of rights to water resources and the way they are exercised are provided for in related laws and regulations. For example, the right to use surface water for aquaculture is provided for in the Fisheries Law, 1986 (revised in 2000).

The Civil General Rules, 1986 and Civil Litigation Law, 1991 contain provisions on related issues, such as (a) exercising property rights; (b) seeking compensation or remedial assistance after such rights have been adversely affected; and (c) obtaining compensation through judicial procedures. Several legal instruments provide for compensation and resettlement, among which are the Constitution, 1982 (revised in 1988, 1993, 1999, and 2004), the Land Administration Law, 1986 (revised in 1998 and 2004), Regulations for Land Acquisition and Resettlement for the Construction of Large and Medium-Sized Water

[1] Division of Legislation Affairs, Department of Law and Policy, State Environmental Protection Administration, No. 115 Xizhimennei Nanxiaojie, Beijing 100035, China. E-mail: yanewxf@yahoo.com.cn.

Conservancy Projects and Hydropower, 1991, and the Regulations on Resettlement of the Three Gorges, 2001. In addition to compensation and resettlement subsidies, these regulations stipulate that certain supplementary benefits may be provided.

According to related provisions, resettlement as a result of large and medium-size water conservation and hydropower projects will be organised by the local governments concerned. To solve the remaining problems of resettlement in the case of existing dams, the State Council has enacted "Guidelines Governing Quickly Solving the Remaining Problems from Existing Dams Directly under the Central Government" (2001). The guidelines stipulate the principles, measures and budgets for solving resettlement problems resulting from existing dams. Therefore, the local governments concerned must formulate effective plans for solving such problems, which must be incorporated into the plans for economic and social development.

The Constitution sets out minority rights. It states that "all nationalities in the People's Republic of China are equal". The State will protect the lawful rights and interests of the minority nationalities, and develop and uphold the principles of equality, unity and mutual assistance among all of China's nationalities. Discrimination against, and oppression of any nationality are prohibited. Any act that undermines the unity of such nationalities or instigates division is prohibited. In areas inhabited by minority nationalities, the State will assist in accelerating their economic and cultural development according to the characteristics and needs of the various minority nationalities. The Law on Minority Regional Autonomy, 1984 (revised in 2001) specifies the principles and measures for protecting minority rights.

Environmental impact assessment

Provisions in the Constitution concerning environmental protection and natural resources stipulate that the State will ensure the rational utilisation of natural resources and provide protection for rare fauna and flora. Controlling and destroying natural resources by any method is prohibited. The State will protect and improve the living and ecological environment as well as prevent or control pollution and other public hazards. These provisions are the foundation of the environmental rights enjoyed by the individual.

According to the Environmental Law, 1989, the Environmental Impact Assessment Law (EIA Law), 2002, and the Regulations on the Administration of Construction Project Environmental Protection, 1998, construction projects having an impact on the environment must undergo EIAs. The EIA Law stipulates that an EIA is required for two categories of plans: (a) the exploitation, utilisation and development in affected areas, river basins and sea areas; and (b) specific plans concerning industry, agriculture, pasturage, forestry, energy, water conserva-

tion, communications, tourism and exploration of natural resources prepared by the relevant departments of the State Council, local people's governments at or above the municipality (with districts) level, and their relevant departments. Thus, both national and sub-national water development plans and dams must go through the EIA process.

According to the Technological Guidelines for EIA, 1993, promulgated by the State Environmental Protection Administration, an EIA must include not only the assessment of the environmental components, but also a general survey and assessment of people's health, socio-economic conditions as well as sites of scenic and historical interest, valuable monuments and relics. The relevant regulations governing the procedures of infrastructure require that a feasibility study must include a survey and assessment of social issues. In the design phase, the EIA and the social issues assessment must be incorporated into the overall project design.

After implementation of a plan that will have a major impact on the environment, the drafting authority must promptly organise a follow-up assessment of the environmental impact and report the results to the examination and approval authority. If there is an obvious adverse impact on the environment, measures for improvement must be put forward. In addition, if the situation is no longer in compliance with the situation approved in the EIA report in the course of a construction and operation project, the construction unit must organise a post-project assessment, adopt corrective measures for problems, and report for the record to the EIA approval authority and construction project approval authority. The EIA approval authority can also order the construction unit to carry out a post-project assessment and adopt corrective measures. The competent department of environmental protection must then conduct follow-up inspections of the environmental impact of a construction project and carry out a thorough investigation of the reasons and responsibility for the creation of serious environmental pollution or ecological damage. Any related organisation found to have violated the provisions of the laws concerned, thus causing damage, should be investigated, and their legal responsibility clearly established.

In the feasibility study stage, EIAs of dams should now be prepared and submitted to the corresponding environmental authority for examination and approval. The environmental measures specified in an EIA must be included in project design. In the course of implementing a project, the construction unit must simultaneously implement the countermeasures and steps for environmental protection raised in the EIA. In the course of the construction and operation of a project, the construction unit must organise a post-project assessment of the environmental impact, adopt corrective measures and report for the record to the corresponding environmental protection authority.

Public access to information, and public participation in decision-making

Several legal instruments, including the Constitution, the Legislation Law, 2000, the EIA Law as well as related pollution control laws, provide for public access to information. Information accessible by the public includes the policies, laws, plans and major projects that have been enacted or decided upon as well as the decision-making process.

The Constitution contains general provisions concerning public access to information. Specific laws provide for public access to information with regard to respective areas. The Regulations on Legislation Procedures for Administration Rules, 2002 state that important draft regulations will be circulated for public comment with the approval of the State Council. Laws and regulations must be posted in the media as soon as they have been promulgated. No regulatory documents may form the basis for administrative implementation, such as permits or penalties, unless they have been open to the public.

A State Council regulatory document, the Implementation Outline for Fully Improving Administration by Law, 2004, urges the establishment of expert consultation and evaluation systems and public hearings with regard to important decision-making that will have a significant impact on the living standards of the public.

With regard to the water management sector, the Water Law, 1988 (revised in 2002) stipulates that government at or above the county level will strengthen the information system on hydrology and water resources. In addition, basic hydrological information will be made public in accordance with the related provisions.

The EIA Law sets out the provisions for public participation in EIAs during the feasibility study phase. It states that draft EIAs of any important plans or projects, except those concerning national security that will have an adverse impact on the environment or affect public environmental rights must be communicated through public hearings, workshops or other channels.

Specific provisions are in place for transparency in decision-making related to water resources infrastructure development.

The Land Administration Law sets out the provisions for public participation of displaced people in the resettlement plans. In the case of land requisitioned by the State, the requisition plan shall publicly announced by the people's government at or above the county level after it is approved following the judicial procedure . The approved plan for compensation and

resettlement subsidies for requisitioned land must be made known to the public, and comments and suggestions solicited from local organisations and people. If the relevant local organisations and people disagree with the standards set for compensation, the relevant local government at or above the county level should negotiate. If negotiation fails, the dispute should be submitted to local government authorities for arbitration.

Infrastructure management

The Water Law provides a set of criteria and guidelines for protecting and developing water resources. In addition, regulatory requirements for the supervision and management of existing dams are embodied in the Regulation for Dam Safety Management issued by the State Council in 1991.

The Ministry of Water Resources has issued numerous dam safety guidelines and regulations including "Evaluation Procedures for Reservoir Dams" (2003) and "Registration Regulations for Dams" (1995). According to these legal instruments, the Ministry of Water Resources, together with other ministries concerned, will conduct supervision of dam safety. The water departments at or above the county level, together with related departments, will supervise and manage dams within their jurisdiction with regard to irrigation and flood management. In the case of existing dams, the relevant departments or operators must have qualified personnel who are knowledgeable about dam safety. They conduct safety monitoring and inspection of dams in accordance with related technical standards. Monitoring results are quickly analysed in order to be informed of operating conditions of dams at all times. If any indicators in the monitoring data show the dams are operating in unsafe circumstances, the department responsible for dams must be informed and remedial measures must immediately be adopted.

Safety evaluations of existing dams must be done every 6 to 10 years. (In the case of a new dam, a safety evaluation exercise must be conducted within 2 to 5 years after the first water storage). If serious flooding, earthquakes or accidents occur during the operational process of any dam, a special safety evaluation must be carried out.

The Law of Flood Control, 1998 requires that people's governments at all levels should organize the relevant departments to intensify the regular inspection, supervision and administration over dams and reservoirs. For those dams in danger which fail to conform to the designed flood standards and anti-earthquake defence requirements, or have serious quality defects, the department in charge of the dams should organize the relevant units to take measures to eliminate dangers and reinforce dams, set a time limit to get rid of dangers

or rebuild dams, and the relevant people's governments should give priority to funds needed. For reservoirs whose dams are likely to collapse, emergency measures for such rush repair and schemes for temporarily evacuating residents should be worked out in advance. The Regulations for Dam Safety Management and Registration Regulations for Dams stipulate that the construction of dams must meet the designated safety standards. The construction unit must, upon completing construction of a dam, file an application with the department responsible for dam registration for an approval inspection. Dams cannot be put into operation unless they have passed such an inspection. The department responsible for dams or the operators must adopt improvements and remedial measures in accordance with the results of safety monitoring.

The costs of compliance are to be included in the overall budget of the dam project in accordance with the related regulations. Dam projects that comply fully with national laws and regulations receive higher priority for the granting of government subsides and local government assistance such as in-kind contributions. Preferential policies have already been adopted for a number of dam projects.

Compliance

Developers and related administrative departments involved in the construction or operation of dams will be subject to public supervision. Any individual or unit has the right to report on, or file charges against units that have violated related laws and regulations and/or obligations in the construction or operation of dams.

Related provisions provide for administrative reviews of compliance. With regard to quality supervision of water conservation projects, a dam project will be subject to quality supervision institutes authorised by the relevant water departments. The project developer must conclude a contract for quality supervision with the relevant supervision institutes which, in turn, will formulate and implement the supervision plan. For a large project, a special supervision team will be set up. In addition, the People's Congress has the duty of inspecting and reviewing the implementation of, and compliance with, related laws. It will therefore carry out inspections to ensure implementation and compliance by developers and government agencies at every stage of dam construction and operation.

The Water Law and local implementation regulations contain numerous penalty provisions for non-compliance. The related Environmental Protection Department will supervise compliance with the environmental protection regulations or standards governing dam construction and operation.

Related regulations contain legally binding mechanisms that ensure compliance with resettlement plans and related legal provisions can be fully implemented. The provisions require resettlement plans for dam projects to be prepared during the design and implementation phases. The approved plan will be implemented by government authorities at or above the county level.

With regard to institutional capacity for resettlement, China has set up resettlement bureaus at the provincial, city and county levels that are responsible for resettlement and rehabilitation in new dam projects. The Ministry of Water Resources has a Resettlement Management Bureau and also manages the remaining problems arising from resettlement in water conservation projects already constructed. In rural areas, the township government and village committees also play an important role in resettlement. The State will establish a fund for resettlement in the form of a special bank account. Appropriations will be made by the resettlement administrative departments in accordance with the annual plan for the fund that is approved by the related government authorities. The fund will be used to finance the resettlement subsidy, the restoration of infrastructure, and environmental protection.

There are related provisions on penalties for fund violations. The Water Law and local implementation regulations contain numerous penalty provisions for non-compliance. Penalties are defined in all design, construction and operational contracts. Related provisions on penalties for violations are also contained in related regulations.

Conservation of aquatic ecosystems and biological resources

The Regulations on Nature Reserves, 1994 contain some general provisions covering protected ecosystems including protected rivers. According to the Principles for Classifying the Categories and Grades of Nature Reserves, 1993, nature reserves can be divided into three categories and nine types. One of the nine types is inland wetlands and watersheds. The Regulations on Nature Reserves, which contain a set of general criteria for designating nature reserves including inland wetlands and watersheds, stipulate that a nature reserve will be set up in areas that possess one of the following characteristics:

- A typical physiographic area with representative natural ecosystems and similar areas within which the natural ecosystems have been damaged to some extent, but which can be restored through proper management and protection;
- Areas where some rare and endangered wild animals and plants are naturally distributed;
- Areas of special significance in view of conservation, such as marine and coastal areas, islands, wetlands, inland water bodies, forests, grassland and deserts.

The Law on Wildlife Protection, 1988 states that protected areas will be established within regions where some rare and endangered wild aquatic animals are naturally distributed or bred.

The Regulations on Nature Reserves specify that a nature reserve will comprise (a) the core zone, (b) the buffer zone, and (c) the experimental zone. Within the core and buffer zones, construction of production facilities is prohibited. In the experimental zone, construction that may pollute the environment or damage natural resources or landscapes is prohibited. In other words, these provisions mean that on the rivers located in designated nature reserves, no construction project including dams can be implemented except under exceptional circumstances.

In a case where there are no alternatives to an important transportation, water conservation and hydropower project going through a nature reserve, particularly the core zone and buffer zone of a nature reserve, adjustments should be made to the zoning or the scope and boundary of a nature reserve. The project must obtain approval from the Nature Reserve Department and the government agency that originally approved the establishment of the nature reserve. Measures necessary for preventing or controlling biodiversity damage and for monitoring the results, as prescribed by the approved EIA and related regulations, must be put into effect. If the project will have such a significant adverse impact that the protected area will no longer have a protection value, a new nature reserve covering an area that is at least equal in size must be established to compensate for the loss of the original nature reserve.

The Regulations on Nature Reserves, the Law on Wildlife Protection, and the Fishery Law provide protection for threatened species. Apart from the provisions on protected areas, these three legal instruments require that when a dam is built on a river that is a migratory passage for aquatic organisms, the construction unit must build parallel facilities for the passage of such organisms or adopt other remedial measures.

Shared rivers

With regard to the management of shared rivers, the Water Law contains the following fundamental provisions regarding the development and utilisation of water resources: (a) unified and overall river basin plans will be formulated; (b) the benefits to upstream and downstream stakeholders on both banks in all relevant regions will be considered in an integrated manner in order to promote the overall efficiency of water resources utilisation;

and (c) the construction of water conservation projects must meet the overall river basin plan requirements.

If a water conservation project involves other administrative regions or departments, the developers must solicit comments from such regions or departments. In a case where the project is located on a river that crosses different provincial administrative regions, prior to submitting the feasibility study for approval, the feasibility study must be examined and approved by the River Basin Commission to ensure that the project meets the overall river basin plan requirements.

Meanwhile, in order to improve institutional capacity for reconciling the competing water resources interests of the different provinces, the Water Law states that the Ministry of Water Resources will establish river basin management institutions that will be responsible for major rivers and lakes designated by the State. China has set up seven basin commissions under the Ministry of Water Resources to coordinate and resolve water-related conflicts among provinces.

The Water Law also contains provisions for resolving water disputes between different administrative regions that share common rivers, through consultations. In cases where consultations fail, the dispute will be decided at a higher level of government and the decision must be respected by all the parties concerned. Pending the resolution of a water dispute, no party may build any project for water drainage, blockage, withdrawal or storage unless an agreement is reached between/among the parties concerned or approval is granted by a higher level of government.

With regard to fisheries in shared rivers, the Fishery Law stipulates that government authorities at or above the county level will negotiate and consult with each other in order to develop acceptable managerial measures. Alternatively, the Fisheries Administrative Department or a higher level of government and their subordinate fisheries supervisory agencies will conduct supervision and administration activities.

Recommendations

Water resources development projects must be harmonised with sustainable social and economic development. Top priority should also be given to ecological considerations in water resources development, and to extending ecological monitoring and management through the stages of construction and operation. EIAs should explicitly take into account social, economic and ecological issues.

EIA and compliance

The following improvements should be considered:

- Revise the existing EIA systems through the formulation of new regulations or the revision of obsolete rules as soon as possible. Guidelines are required for water development planning and post-project environmental assessment;
- A mechanism for environmental monitoring and management during the construction and operation phases of dams should be established and regularly improved. According to the related environmental regulations, the internal environmental plans for monitoring and management must be established by the construction team or the dam operators. However, considerable difficulties are being experienced in implementing these provisions. For example, only a few specific and detailed legally-binding provisions exist that govern environmental monitoring and management applied to dam-specific issues, and provide economic incentives for compliance. To overcome these difficulties, the following actions will be necessary:
  - Environmental requirements or plans need to pay more attention to monitoring and enforcement as well as training requirements for ensuring effective implementation;
  - Environmental monitoring plans need to be less all-encompassing and more focused on potentially significant effects;
  - Management and monitoring plans need to be accompanied by detailed budgets; and
  - Studies and the development of systems for evaluation and certification of green dams and green hydropower need to be carried out.

Public participation

With regard to public participation, the following improvements are needed:

- In order for citizens to be better informed, more information needs to be put into the public domain in a way that is easily accessible to all interested parties. At present, much EIA information about water resources development is not easily obtained;
- A mechanism for ensuring full public participation in the decision-making process during all stages of water resources development should be established and regularly improved;
- Specific legal instruments governing the procedures and channels for public participation in the decision-making process on water resources development should be formulated;
- The EIA Law has legalised public participation in EIA decision-making and the Land Administration Law provides for public participation in compensation and resettlement

planning. However, in general, the provisions on public participation in the decision-making process are not complete and systematic, especially with regard to water resources management;

- Specific public participation procedures in terms of decision-making on water resources development plans and projects are needed;
- Provisions are required that enable public participation during the early stage of dam construction as well as inputs from displaced people during the early stage of dam location. Specific provisions are required for public involvement during the construction and operational stages of dams.

Resettlement

With regard to resettlement, it is clear that that there is much room for improvement. The following changes should therefore be made:

- Further study and improvement of the policies and regulations for ensuring that affected persons receive an equitable share of the benefits accruing from the development for water resources in the long term;
- Provision of a clear procedure for ensuring full participation by affected persons during all stages of the resettlement process;
- Improved management of resettlement funds in order to achieve the maximum benefit;
- Formal and effective procedures and channels should be established or improved to enable affected persons/entities to settle disputes;
- The incentives for compliance with resettlement plans should be further identified and defined; and
- Resettlement staff training should be improved to ensure that those staff are more aware of their operating context and responsibilities.

中国的水资源发展
对中国正式制度框架的回顾与评论

燕娥[1]

总体而言，当前中国的政策与立法框架符合WCD的建议，并且在长期展望、具体观点以及在各种程序上都对世界水坝委员会的战略重点给予了配合。当前的政策及立法框架与WCD的水资源及能源资源发展的战略重点之间并不存在任何直接或间接的冲突。

基于中国的具体国情，当前的体系（包括在与水资源相关的问题上的环境影响评价(EIA)制度和公众参与制度）需要得到进一步改进与发展。在实施以及遵守现有的法律与政策方面还需要加大力度。

权利的认可与保护

在中国，水资源归国家所有。国务院代表国家行使所有权。国家鼓励单位和个人合法开发和利用水资源并保护他们的合法使用权。对水资源的各种权利及其行使方式在相关的法律法规中都有明确规定。例如在水产业中，用于养殖业的水域和滩涂的使用权在《渔业法》（1986 年制定、2000 年修改）中就有明确规定。

《民法通则》（1986）以及《民事诉讼法》（1991）中对相关问题也作出规定，例如，①行使财产权；②该权利受到严重影响时寻求赔偿或补偿的权利；以及③获得赔偿的法律途径。许多法律文件对赔偿问题以及移民安置问题做出了规定，其中包括《宪法》(1982 年制定、1988，1993，2004 年分别修订)、《土地管理法》(1986 年制定、1998，2004 年分别修订)、《大中型水利水电工程征地和移民安置条例》(1991）以及《长江三峡工程建设移民条例》(2001)。除赔偿以及移民补助之外，有些法律文件还规定可以提供某些额外优惠政策。

根据相关规定，大中型水利水电项目所造成的移民安置问题由相关地方政府解决。为了解决现有水坝工程中尚未解决的移民问题，国务院办公厅转发了水利部、财政部等部门《关于加快解决中央直属水库移民遗留问题的若干意见》(2002)。该《意见》为解决现有水库造成的移民安置问题规定了原则、措施和预算。各相关地方政府必须为解决此类问题制定有效的规划，并且将该类规划纳入当地经济与社会发展规划之中。

《宪法》还就少数民族的权利作出了规定。《宪法》规定：中华人民共和国各民族一律平等。国家保护各少数民族的合法权利和利益，发展并维护各民族平等、团结、互助的原则。禁止任何歧视

1 国家环境保护总局　政策法规司 法规处 燕娥 E-mail：yanewxf@yahoo.com.cn.

与压迫任何少数民族的行为。禁止任何破坏民族团结，煽动民族分裂的活动。在少数民族聚居区，国家根据各少数民族的特点和需要，帮助少数民族发展经济和文化。《民族区域自治法》(1984 年制定、2001 年修改）为保护少数民族的权利规定了具体的原则和措施。

环境影响评价制度(EIA 制度)

《宪法》中有关环境保护和自然资源的条款还规定，国家保障自然资源的合理利用，保护珍贵的动物和植物。禁止以任何形式占有和破坏自然资源。国家保护和改善生活环境和生态环境，防治污染和其他公害。这些条款为公民享有环境权利提供了基础。

根据《环境法》(1989)、《环境影响评价法》(2002)以及《建设项目环境保护管理条例》(1998）的规定，对环境有影响的建设项目必须进行环境影响评价。《环境影响评价法》规定，以下两类规划必须进行环境影响评价：①土地利用的有关规划、区域、流域和海域的开发利用规划；②工业、农业、畜牧业、林业、能源、水利、交通、城市建设、旅游以及自然资源开发的有关专项规划等。因此，无论是国家级还是地方级的水利发展规划和水坝项目都必须进行环境影响评价。

根据国家环保局发布的《环境影响评价技术导则》(1993)规定，环境影响评价的内容不仅包括对环境因素的评价，还必须对居民的健康状况，社会经济状况和风景名胜、有重要价值的历史遗迹进行调查。有关基础设施建设程序的规定还要求，可行性研究的内容必须包括对社会问题的调查和评估。在规划设计阶段，环境影响评价和社会问题评估必须纳入整个项目的整体规划之中。

对环境有重大影响的规划付诸实施之后，规划的编制部门应当及时组织环境影响的跟踪评价，并向原审批该规划的部门汇报评价结果。如果发现有明显的不良影响的，则必须要采取改进措施。另外，在项目的建设和运行过程中产生不符合经审批的环境影响评价文件的情形的，建设单位必须组织环境影响的后评价，对发现的问题采取纠正措施，并报原环境影响评价文件审批部门和建设项目审批部门备案；原环境影响文件审批部门也可以责成建设单位进行环境影响的后评价，采取改进措施。

环境保护行政主管部门应当对建设项目投入生产后所产生的环境影响进行跟踪检查，对造成严重环境污染的或者生态破坏的，应当查清原因、查明责任。发现环境影响评价机构或者环境影响评价文件的审批机关有违背相关法律规定的行为，要依法追究相关法律责任。

在可行性研究阶段应当准备水坝环境影响评价，并交由相关的环境部门进行审批。环境影响评价中所包含的环境措施必须纳入整个项目设计规划之中。在项目的实施过程中，项目的建设单位必须同时实施环境影响评价中提到的问题对策和环保措施。在工程的建设和运转过程中，建设单位应当组织工程环境影响后评价，(发现问题后)采取纠正措施，并向相关环保部门进行汇报备案。

决策过程中的公众知情权以及公众参与

许多法律文件，诸如《宪法》,《立法法》(2000),《环境影响评价法》以及相关的污染控制法等都对公众知情权做出了规定。公众的知情权既包括对既定政策，法律，规划和重大工程项目的知情权，也包括对决策过程的知情权。

《宪法》对公众知情权做出了原则规定。各具体法律对相关领域的知情权做出了具体规定。《行政法规制定程序条例》(2002)中规定，在重要的行政法规发布之前，经国务院同意，其草案应当向社会公布，供公众讨论和评论。法律法规一经颁布必须通过媒体予以公布。任何文件在公布之前都不能作为执法，包括(作出批准或处罚)的依据。

国务院法规性文件之一——《全面推进依法行政实施纲要》(2004年) 规定，对社会涉及面广，与公众利益密切相关的决策事项，应当向社会公布，或者通过举行座谈会，听证会、论证会等形式广泛听取意见。应当建立并采用专家咨询与评估制度和听证制度。

在水管理方面,《水法》(1988年制定、2002年修订) 规定，县级以上人民政府要加强在水文和水资源方面的信息系统。另外，基本的水文信息应当按照相关规定予以公示。

《环境影响评价法》还规定，在可行性研究阶段公众可以参与环境影响评价。它规定，任何可能对环境产生重大影响或直接涉及公众环境权益的重要规划或工程项目的环境影响评价文件草案应当通过听证、研讨或其它途径与公众交换意见。但是国家规定需要保密的情形除外。

在制定与水资源基础设施建设有关的决策时，决策过程也应透明。

《土地管理法》为移民规划中需要进行移民安置的居民规定了公众参与。国家征收土地的，依照法定程序批准后，应当由县级以上人民政府公示。征地补偿方案也应当由有关地方人民政府进行公示，并征询当地组织和居民的意见和建议。如果当地组织和居民对补偿标准有争议的，由相关的县级以上地方人民政府部门协调；协商不成的，由批准征地的人民政府裁决。

基础设施的管理

《水法》为水资源的保护和发展规定了一整套标准和指导方针。另外，1991年国务院发布的《水库大坝安全管理条例》中对现有水坝的监督和管理提出了要求。

水利部发布了很多有关水坝安全的规范性文件，其中包括《水库大坝安全鉴定办法》(2003)和《水库大坝注册登记办法》(1995)。根据这些法律文件，水利部会同其它相关部委一起对水坝的安全问题实行监督。县级以上水管理部门会同其它相关部门一起对其管辖范围以内的、涉及到灌溉与洪水管理的水坝实行监督与管理。

在现有的水坝管理上，相关部门或相关经营者必须要配备具有水坝安全管理知识的合格人员。他们的任务是根据相关的技术标准对水坝实行监督和检查，并迅速分析监督结果，以便随时掌握水坝的运行情况。一旦发现监督结果的任何数据显示水坝正在危险状态下运行，应马上通知水坝的责任部门并立即采取补救措施。

现有水坝每6到10年必须进行一次安全鉴定（新建水坝建成之后，在第一次蓄水之后的2到5年之内要进行一次安全鉴定）。任何水坝在运行过程中一旦经受过洪水、地震或其它事故，必须要进行一次特殊的安全鉴定。

《中华人民共和国防洪法》(1998) 要求，各级人民政府应当组织有关部门加强对水库大坝的定期检查和监督管理。对未达到设计洪水标准、抗震设防要求或者有严重质量缺陷的险坝，大坝主管部门应当组织有关单位采取除险加固措施，限期消除危险或者重建，有关人民政府应当优先安排所需资金。对可能出现垮坝的水库，应当事先制定应急抢险和居民临时撤离方案。《水库大坝安全鉴定办法》以及《水库大坝注册登记办法》中都规定，修建水坝必须要达到指定的安全标准。营造单位在完成水坝的修建过程之后必须申请主管水坝注册的部门进行批准鉴定。水坝在通过此类鉴定之前不得投入运行。水坝的责任部门或运营者必须根据水坝安全监督的结果采取改进或补救措施。

根据相关规定，依照法律要求对水坝作出的各项(建设、管理或调整)活动，其费用应当纳入整个水坝工程的预算。完全符合国家法律法规的水坝工程优先获得政府的补贴和当地政府的协助，例如实物捐助。实际上有很多水坝工程已经因此而享受到了优惠政策。

对法律法规和相关规划的遵守

水坝的建设及运行过程中涉及到的开发商和相关的行政部门受公众监督。任何单位和个人都有权利检举、揭发或控告在水坝的建设和运行过程中有违背法律法规或渎职行为的单位。

相关文件规定了对法律法规的遵守情况的执法监督。在蓄水工程的质量监督方面：相关水管理部门所授权的监督机构应对水坝工程的质量进行监督。项目开发商必须与相关的质量监督机构签订质量监督合同；而该质量监督机构则需制订并执行相应的监督计划。对于大型项目工程来讲，应当成立一个特别监督小组。

另外，人大有义务监督检查相关法律的实施和遵守情况。因此，人大会发挥它的监督作用，监督检查在水坝建设和运行中相关法律实施情况。

《水法》及其有关地方法规中同时也包含了若干对不遵从相应法律法规的行为的处罚条款。相关的环保部门要对有关水坝建设和运行的环保规定或环保标准的遵守情况进行监督。

相关条例中规定了一系列有法律约束力的机制，并确保移民安置规划得到遵守、相关法律条款得到实施。相关的法律条款还要求在水坝工程的设计与实施阶段制定水坝工程移民安置规划。该类移民安置规划在得到批准后应由相关的县级以上政府进行实施。

在移民安置问题的制度能力建设方面：中国已经设立省、市和县级移民局负责水坝工程中的移民安置问题。水利部设有水库移民开发局，专门管理水利工程中的移民问题。在农村地区，乡镇政府和村民委员会在移民的安置问题上也发挥有重要作用。国家将设立一个移民基金，专账存储，专款专用。移民管理部门将会根据相关政府部门批准的年度规划划拨基金。此基金将用于发放移民补贴，修复基础设施以及环境保护事业。

另外还有相关款项对违反基金用途的行为规定了处罚措施。《水法》及其有关地方法规中同时也包含了若干对不遵从相应法律法规的行为的处罚条款。处罚条款在所有的设计、建设以及运行合同中都有明确列出。相关的法规条例中对违法行为也规定了处罚条款。

水生态系统和生物资源的保护

《自然保护区条例》(1994)中包含有几条关于保护(包括河流在内的)生态系统的概括性规定。《自然保护区类型与级别划分原则》(1993)规定，自然保护区可以分为3个类别，9种类型。9个类型之一就包括内陆湿地水域生态类型。《自然保护区条例》规定了一整套设立自然保护区(包括内陆湿地和水域生态类型)的标准——《条例》规定，任何具有以下特征之一的地区都可以申请设立自然保护区：

- 典型的自然地理区域、有代表性的自然生态系统区域以及已经遭受破坏但经保护能够恢复的同类自然生态系统区域；
- 珍稀、濒危野生动植物物种的天然集中分布区域；
- 具有特殊保护价值的海域、海岸、岛屿、湿地、内陆水域、森林、草原和荒漠。

《野生动物保护法》(1988)规定，在濒危稀有野生水生动物自然分布和繁殖的地区设立保护区(自然保护区)。

《自然保护区条例》明确规定，自然保护区由三部分组成：核心区，缓冲区和试验区。在核心区和缓冲区范围内禁止建设生产设施；在试验区范围以内，禁止进行任何可能污染环境或破坏自然资源或景观的建设活动。换言之，这些条款也意味着在位于自然保护区范围以内的河流上(除有特殊情况外，)原则上不可以建设包括水坝在内的建设项目。

经国家批准的交通、水利水电重点建设项目因受自然条件限制，必需穿越自然保护区，特别是自然保护区的核心区、缓冲区内时，应对自然保护区的内部功能区划或者范围、界线进行适当调整。并经自然保护区管理部门和原批准设立该自然保护区的政府部门的批准。批准的环境影响评价文件及有关法规所规定的预防或控制生物多样性损失的措施和监督措施一定要付诸实施。若上述调整对自然保护区的保护对象产生重大影响，经专家论证表明已失去其保护价值的，应通过异地建设不少于原保护区面积的新的自然保护区给予补偿。《自然保护区条例》、《野生动物保护法》以及《渔业法》都为濒危物种规定了保护性条款。除为保护地提供保护外，以上三部法律文件还要求，在水生生物的洄游通道上修建水坝时，水坝的建设单位必须要修建过鱼设施，或者采取其他补救措施。

跨行政区域河流的共享

在跨行政区域河流的管理方面，《水法》就水资源的开发和利用做出了以下几点基本规定：①必须要制定统一的整体流域规划；②开发利用水资源，应当全面规划，统筹兼顾，标本兼治，综合利用，讲求效益，兼顾上下游、左右岸和有关地区之间的利益，充分发挥水资源的综合效益；③水利工程的建设必须要符合整个流域的整体规划要求。

如果某水利工程项目还涉及到其它行政区域或行政部门，该工程开发上必须向该行政区域或部门征求意见。如果工程处于一条跨省的河流上，在报批可行性研究报告之前，该可行性研究报告需交由流域管理委员会进行审批，流域管理委员会在审批该可行性研究报告之前必须要确定该工程是否符合整个流域的整体规划要求。

同时，为协调不同省份在水资源利益上的冲突，《水法》规定，水利部设立流域管理机构负责管理国家指定的主要河道和湖泊。目前中国水利部已经设立了 7 个流域管理委员会，以协调并解决不同省份间与水资源有关的问题。

《水法》还规定，共享同一条河流的不同行政区域之间发生水事纠纷的，应当协商处理；协商不成的，由上一级人民政府裁决，有关各方必须遵照执行。在水事纠纷解决前，未经各方达成协议或者共同的上一级人民政府批准，在行政区域交界线两侧一定范围内，任何一方不得修建排水、阻水、取水和截（蓄）水工程，不得单方面改变水的现状。

在跨行政区域河流的渔业方面，《渔业法》规定相关的县级以上政府部门应相互磋商，以制定相关各方都可以接受的措施。渔业管理部门或上级政府部门及其所属的渔业监督部门实施相关的监督和管理。

建议

水资源开发项目必须与社会和经济的可持续发展相协调。在水资源的开发过程中，应当考虑生态因素，并在工程项目的建设和运行的各阶段中加强生态监督和管理。在社会、经济和生态事务中，应明确考虑环境影响评价这一因素。

环境影响评价体系以及对它的遵守

在这一方面，以下各项改进措施应当予以考虑：

- 通过制定新的条例或尽快修订过时的规定，修改现有的环境影响评价体系。需要对水发展规划及工程后环境评估制定指导方针。
- 应当建立水坝建设和运行阶段的环境监督和管理体制，并定期进行改进。根据相关的环境管理规定，建设单位或水坝运营单位必须要制定内部监督管理计划。但是实践当中，在

实施这些规定时却困难重重。例如，目前对环境监督和水坝事务的管理做出规定，并为遵守法律要求的行为提供经济奖励的只有极个别的几条法律条款。为了克服实施过程中的这些困难，有必要采取下列措施：

- 为了保证(相关规定的)有效的实施,环境要求或环境规划需要将更多的精力放在对监督、实施以及培训等过程的要求上；
- 环境监督规划的内容不需要包罗万象，需要更加注重潜在的重大影响；
- 管理和监督规划需要有具体的预算支持作后盾；同时
- 需要研究、发展并采取绿色水坝和绿色水电的评估和颁证制度。

公众参与

在公众参与制度方面，需作出以下改进：

- 为了让公众了解更多的相关信息，需要公开更多的内容并确保所有相关方能毫无困难地获得这些信息。目前，公众获取有关水资源的环境影响评价的信息有限；
- 应当在水资源开发的各个阶段中建立公众参与决策的机制，并定期进行改进；
- 应当制定具体的法律文件，对水资源开发过程中公众参与决策的程序和途径作出规定；
- 《环境影响评价法》将公众参与决定环境影响评价的做法合法化，同时《土地管理法》规定，公众可以参与决定补偿和移民安置规划。但是，总体而言，这些规定公众可以参与政策决定过程的条款并不完整，并不系统，尤其是在水资源管理方面；
- 在水资源开发规划和工程项目方面须制定公众参与的具体程序；
- 需要制定相关规定，以便在水坝建设的早期阶段实现公众参与并听取需进行移民安置的居民的意见。同时需要制定具体措施，确保在水坝的建设和运行阶段实现公众参与。

移民的安置

在有关移民安置的制度上，也有很多方面需要改进。以下是需要改进的几个方面：

- 进一步研究和改进相关政策和措施，确保受工程影响的居民能从水资源的长期发展中获得公平的收益。
- 制定明确的程序，确保受影响居民能全面参与移民工作的各个阶段；
- 改善移民基金的管理，使移民基金(的利用和管理)达到最高效率；
- 建立或改进正式的、有效的程序和渠道，确保受影响人／单位能快速有效地解决争议；
- 进一步确定和规定对遵守移民规划的居民的奖励制度,并且提高对移民工作人员的培训，确保相关工作人员能更加注重具体操作环境、更加明确自己的义务和责任。

Lao People's Democratic Republic Water Resources Development

A review of the existing policy and legislation framework

Chantho Milattanapheng[1]

There are no direct or indirect conflicts between the existing policy and legislative framework of the Lao People's Democratic Republic (hereafter, the Lao PDR) and any element of the WCD Strategic Priorities. In fact, they complement each other in relation to sustainable development of the socio-economic objectives and the use of natural resources, particularly water and water resources development. The Government of the Lao PDR has developed a comprehensive legislative framework to support the sustainability of dams as well as national development of the hydropower sector.

The existing national-level legal framework supports the policy framework. In some sectors, such as the power sector, such frameworks have been sufficiently developed. Some water-related sub-sectors are in the process of drafting such frameworks while in others it is absent. There is a need to focus on planning and management in the water and energy sectors in the Lao PDR. This can best be achieved by focusing on the key stages in decision-making that influence final outcomes and where compliance with regulatory requirements can be verified.

Recognition and safeguarding of rights and entitlements

Several legal instruments exist in the Lao PDR that provide for compensation to people adversely affected by the construction and operation of dams. They include the Electricity Law, 1997, National EIA Regulation, 2000, the Regulation on Implementing Environmental Assessment for Electricity Projects, 2001, and Environmental Management Standards for Electricity Projects, 2001. Legally-binding provisions exist for handling reparation claims for losses resulting from existing dams.

---

[1] Chief, Social and Environmental Management Division, Department of Electricity, Ministry of Industry and Handicrafts, Vientiane, Lao People's Democratic Republic. E-mail: hhpo@laotel.com.

The Environment Management Standards for Electricity Projects as well as resettlement policy and guidelines on involuntary resettlement state that an affected person is entitled to receive direct or indirect benefit sharing. A clear benefit-sharing mechanism governing construction and operation of dams is provided. However, this mechanism depends on agreements at the project level.

The Lao people, including the indigenous or tribal peoples, have equal rights regulated by the Constitution, which stipulates that "the State pursues the policy of unity and equality among all ethnic groups. All ethnic groups have the right to protect, preserve and promote their fine customs and culture as well as those of the nation. All acts of division and discrimination among ethnic groups are prohibited and the State takes every measure to upgrade the socio-economic development of all ethnic groups".

Environmental impact assessment

Environmental impact assessments (EIAs) must include an assessment of social, health and cultural issues according to the Environmental Protection Law, 1999, National EIA Regulation, and the Regulation on Implementing Environmental Assessment for Electricity Projects. An EIA report must describe the existing socio-economic and natural environment in the area(s) affected by the project concerned. It must identify and describe the environmental, social and economic impacts of the project and compare them to the impacts of one or more feasible alternatives to the project. In cases where impacts cannot be prevented, the report must identify those impacts and propose ways to compensate for them. The report must also select one alternative that best accomplishes the purpose of the project, while best protecting environmental values. In addition, the EIA report must supplement existing published information with sufficient field studies to adequately determine the existing conditions in the area(s) affected.

The National EIA Regulation and the Regulation on Implementing Environmental Assessment for Electricity Projects require that the decision-making process related to dams be undertaken in parallel at different stages of the environmental assessment process. The Environmental Protection Law provides a legal framework for unified environmental management of development projects with the aim of preserving the environment, and making rational and sustainable use of natural resources as a contribution to national socio-economic development and the people's guaranteed health and upgraded quality of life. Such principles are stated in other laws.

Public access to information and public participation in decision-making

The Lao PDR is increasing the extent of public involvement, via consultation. More people in society can be involved in discussions about economic and social development activities. However, public access to information and public participation in decision-making for plans and policies are still not being properly or sufficiently implemented for project activities. In many significant projects, there is still no public involvement in decision-making. In others, public participation is minimal.

There is no specific legislation on public access to information; however, provision is made in different laws and regulations concerning the form of public involvement. This is dealt with in the National EIA Regulation, the Regulation on Implementing Environmental Assessment for Electricity Projects, and more particularly in the Summary of the National Public Involvement Guidelines, 2003, which are largely based on the United Nations Economic and Social Commission for Asia and the Pacific Public Involvement Guidelines. The Guidelines provide a definition of public involvement and its component parts. It introduces the main principles underlying the consultation and participation process, and provides clarification (with examples) of public involvement terminology that is commonly used by donor agencies and non-governmental organisations.

Public participation is also stipulated in the relevant laws and regulations as it applies to the water development plan, and to the planning, construction and operation of dams, particularly the National EIA Regulation and the Regulation on Implementing Environmental Assessment for Electricity Projects. The rights and obligations concerning environmental protection are stated in the Constitution, 1991, and various other laws.

Infrastructure management

The fundamental legal instrument is the Water and Water Resources Law, 1996, which states: “The responsible water authority shall determine quality standards for drinking water and used water that is drained into water sources or into some other place”.

Various standards for providing a clear, common set of criteria for developing water and energy resources by using dams, such as the Environmental Management Standards for Electricity Projects, and Lao Electric Power Technical Standards, 2004 have been developed by the Ministry of Industry and Handicrafts/Department of Electricity and the Japan Inter-

national Cooperation Agency. In addition, the National Resettlement Guidelines, 2004, Third-Party Monitoring Guidelines for the Energy and Transport Sectors, 2003 and National Public Involvement Guidelines provide related directives. These standards were developed using experience gained from the Nam Theun 2 project environmental assessment process. They have not yet been applied to other projects.

Legally-binding provisions are also made for supervising the management of existing dams in the Environmental Protection Law, Electricity Law, the National EIA Regulation, the Regulation on Environmental Impact Assessment for Electricity Projects, Environmental Management Standards for Electricity Projects, and Lao Electric Power Technical Standards. Since 1996, the Lao PDR has had a formal environmental assessment framework in place. This should be used to ensure that new projects meet the standards required by the people of the Lao PDR. It could also be used as a guide to assess projects that were completed before the framework was formally adopted.

The management of previously existing and new dams approved after the enactment of the Environmental Protection Law, Electricity Law, National EIA Regulation, and the Regulation on Environmental Impact Assessment for Electricity Development are bound by specific legal provisions. There is now provision for periodic reviews of existing and new dams (which must use the Lao Electric Power Technical Standards) which should bring about improvements in the operational performance and safety of dams across the country.

Compliance

The Environmental Protection Law states that development projects and activities that have or will have the potential to affect the environment must submit an EIA report to the concerned environmental management and monitoring unit for an environment compliance certificate to be issued before starting the project. Provisions for EIA compliance are also laid down in the National EIA Regulation and the Regulation on Implementing Environmental Assessment for Electricity Projects.

Provisions for compliance with social and environmental commitments including benefit sharing are made in the Environmental Protection Law, Water and Water Resources Law, Electricity Law, National EIA Regulation, the Regulation on Implementing Environmental Assessments for Electricity Projects, and Environment Management Standards for Electricity Projects. Furthermore, there are requirements for commitments in developing Initial Environmental Effects (IEE) and EIA reports.

Legally-binding mechanisms for ensuring that compliance plans are fully implemented are laid down in the Environmental Protection Law, National EIA Regulation, Regulation on Implementing Environmental Assessment for Electricity Projects, and Environment Management Standards for Electricity Projects.

Legally-binding measures for apportioning costs of compliance are provided in the National EIA Regulation, the Regulation on Implementing Environmental Assessment for Electricity Projects, and Environment Management Standards for Electricity Projects. Legally-binding provisions for external reviews of implementation and compliance exist in the National Third-Party Monitoring Guidelines.

The Lao PDR has no specific legal instruments for providing incentives and/or penalties for non-compliance with dam agreements or contracts. However, non-compliant persons and organisations are considered to be in violation of legal instruments. Penalties for violation are specified in the Environmental Protection Law, Electricity Law, and National EIA Regulation.

Measures for discouraging and preventing corruption in dam construction and operation are stated in related laws such as the Law on the Government of the Lao PDR No. 01/95 (Articles 7 and 10: Rights and Duties of the Government), which highlights the fact that the Government of the Lao PDR is vested with rights and duties to organise the inspection of the State, fight against the non-observance of laws, corruption and the settlement of claims by the population on the basis of the Penal Law, 1989.

Conservation of aquatic ecosystems and biological resources

The Lao PDR does not appear to have formulated any special laws or regulations for preventing, minimising and/or mitigating the impact of dams on rivers that flow through protected areas or on natural habitats of wildlife. However, indirect references to these issues are made in the Environment Protection Law, Water and Water Resources Law, and Electricity Law.

Several legal instruments are related directly to the protection of threatened and/or endangered species. Others relate more to environmental conservation. These legal instruments include the Law on Water and Water Resources, the Environment Protection Law, the Forestry Law, 1996 and the Electricity Law.

Shared rivers

The various aspects of national and/or sub-national legal instruments that provide for cooperation in managing shared water resources, including the impact of dams, are addressed in the National Social and Economic Development Plan and the Five-Year Plan, 2001-2005, by the Cooperation and Planning Committee, the National Strategic Plan for Mekong River Basin Development, 2002, the Agreement on Cooperation for Sustainable Development of the Mekong River Basin, 1995, and the Water and Water Resources Law. The shared Mekong River takes in waterways that flow through two or more States and applies to a range of projects, including hydroelectric projects. It is recognised that the co-operation and goodwill of the riparian countries is essential to the efficient utilisation and protection of this international waterway. Accordingly, policy stipulates that the international aspects of a project on an international waterway must be dealt with at the earliest possible opportunity. Each beneficiary State is required to formally notify the other riparian countries of a proposed project and the project details.

International treaties and agreements related to managing shared water resources to which the Lao PDR has become a signatory or a Party include: (a) the United Nations Convention to Combat Desertification (accepted in 1996); and (b) the Convention on Biodiversity, 1992 (acceded to in 1996). In addition, the Lao PDR has acceded to the Convention on International Trade in Endangered Species of Wild Fauna and Flora, and is in the process of becoming a Party to the Ramsar Convention on Wetlands of International Importance.

Recommendations

The Lao PDR needs to direct its efforts towards further developing, amending and implementing related statutory frameworks in order to facilitate and promote economically, financially, socially and environmentally sustainable development of dams and other water infrastructure.

The EIA regulations currently applied to some projects in some parts of the country could still be further improved. Such reforms should be based on reviews of technical and administrative deficiencies, gaps and overlapping responsibilities between ministries. Of course, wider application of the EIA framework remains a major goal for supporters of the regulatory system.

To ensure the development of the power and water sectors in the Lao PDR, the Government of the Lao PDR will need to develop and enhance the legal and regulatory framework in order to effectively direct and facilitate power sector development. The Government of the Lao PDR is continuing the process of reform in order to provide a balanced and effective framework that gives consideration to the long-term interests of the country as well as the reasonable rights of all parties involved with, or affected by, the power sector. The key objectives in meeting this priority should include: (a) reviewing legislation governing the power sector; (b) strengthening laws protecting the environment; (c) strengthening environmental monitoring and enforcement; (d) developing supplementary guidelines and a manual related to Lao Power Technical Standards; and (e) developing a legal framework in alignment with international investment practices.

The management of policies/plans as well as the environmental effects of dams and water resources development requires effective inter-agency collaboration, under the leadership of an agency in charge of overall watershed management. This will require defining a set of enforceable procedures.

Awareness among both civil society and the Government of the Lao PDR of environmental and social safeguards embodied in the law needs to be improved. The lack of knowledge of legal mandates and the implications of legal frameworks, including provisions for enforcement and compliance, civil and criminal sanctions such as warnings, fines, revocation of licenses, civil sanctions, and criminal charges urgently need to be addressed. Environmental monitoring and enforcement need to be strengthened. At the same time, national capacity to improve skills in relation to the legislative framework and planning processes in water resources, including integrated water resources management, needs to be reinforced.

ການພັດທະນາຊັບພະຍາກອນແຫ່ລ່ງນ້ຳ ຂອງ ສປປລາວ

ການທົບທວນຄືນກ່ຽວກັບແຜນນະໂຍບາຍ ແລະ ກົດໝາຍ

ຂຽນ ແລະ ແປໂດຍ: ທ່ານ ຈັນໂທ ມີລັດທານາແພງ[1]

ໂຄງປະກອບດ້ານແຜນນະໂຍບາຍ ແລະ ນິຕິກຳຂອງ ສປປ ລາວທີ່ມີປະຈຸບັນ ແລະ ບັນ ດາເນື້ອໃນຂອງໂຄງປະກອບຍຸດທະສາດບຸລິມະສິດຂອງຄະນະກຳມະການໂລກກ່ຽວກັບ ເຂື່ອນໂດຍທາງກົງ ຫລື ທາງອ້ອມແລ້ວບໍ່ໄດ້ມີຂໍ້ຂັດແຍ່ງກັນ. ໃນຕົວຈິງ, ນະໂຍບາຍ ດັ່ງ ກ່າວໄດ້ມີສ່ວນປະກອບແບບຄົບຖ້ວນທີ່ພົວພັນເຊິ່ງກັນ ແລະ ກັນເພື່ອເປົ້າໝາຍການພັດ ທະນາທາງດ້ານເສດຖະກິດ-ສັງຄົມ ແລະນຳໃຊ້ຊັບພະຍາກອນທຳມະຊາດແບບຍືນຍົງ, ໂດຍສະເພາະແມ່ນການພັດທະນານ້ຳ ແລະຊັບພະຍາກອນແຫລ່ງນ້ຳ, ລັດຖະບານແຫ່ງ ສປປລາວໄດ້ພັດທະນາໂຄງປະກອບທາງດ້ານນິຕິກຳແບບຄົບຖ້ວນເພື່ອສະໜັບສະໜູນ ຕໍ່ການພັດທະນາເຂື່ອນແບບຍືນຍົງນັ້ນກໍ່ຄືການພັດທະນາຂະແໜງໄຟຟ້າແຫ່ງຊາດ.

ໂຄງປະກອບທາງດ້ານນິຕິກຳແຫ່ງຊາດທີ່ມີປະຈຸບັນສະໜັບສະໜູນໃຫ້ແກ່ແຜນນະໂຍບາຍ ສຳລັບບາງຂະແໜງການເຊັ່ນ: ຂະແໜງໄຟຟ້າ, ໄດ້ມີການພັດທະນາໂຄງປະກອບດ້ານ ນະໂຍບາຍ ແລະນິຕິກຳຢ່າງພຽງພໍ. ບາງຂະແໜງການທີ່ຕິດພັນກັບນ້ຳກຳລັງຢູ່ໃນຂັ້ນ ຕ້ອນການຮ່າງໂຄງປະກອບດັ່ງກ່າວ, ພ້ອມດຽວກັນນັ້ນບາງຂະແໜງການກໍ່ຍັງບໍ່ທັນມີ. ປະເດັນດັ່ງກ່າວເຫັນວ່າຈຳເປັນຕ້ອງໄດ້ລົງເລິກທາງດ້ານການວາງແຜນ ແລະ ການຄຸ້ມ ຄອງບໍລິຫານຕໍ່ຂະແໜງນ້ຳ ແລະ ພະລັງງານ ໃນ ສປປ ລາວ. ປະເດັນດັ່ງກ່າວເປັນການ ດີທີ່ສຸດ ທີ່ຈະບັນລຸໄດ້ນັ້ນ ຕ້ອງລົງເລິກກ່ຽວກັບຂັ້ນຕອນສຳຄັນໃນການຕັດສິນໃຈ ທີ່ມີ ການສະທ້ອນໃຫ້ເຫັນຜົນໄດ້ຮັບຂັ້ນສຸດທ້າຍ ແລະ ບ່ອນໃດຄວນຕ້ອງໄດ້ປະຕິບັດຕາມ ຄວາມຈຳເປັນ ທີ່ກົດໝາຍກຳນົດໄວ້ນັ້ນຕ້ອງພິສູດໃຫ້ເຫັນຊັດເຈັນ.

ການຮັບຮູ້ ແລະ ການປົກປ້ອງກ່ຽວກັບສິດ ແລະ ການໃຫ້ສິດ

ໃນປະຈຸບັນ ສປປ ລາວ ໄດ້ພັດທະນາຫລາຍໆກົດໝາຍເພື່ອເປັນເຄື່ອງມືໃນການຈັດຕັ້ງ ປະຕິບັດສຳລັບການຊົດເຊີຍໃຫ້ແກ່ປະຊາຊົນຜູ້ທີ່ໄດ້ຮັບຜົນກະທົບທາງລົບ ຈາກການກໍ່ ສ້າງ ແລະ ດຳເນີນງານຂອງເຂື່ອນ, ໃນນັ້ນມີກົດໝາຍວ່າດ້ວຍໄຟຟ້າ 1997, ລະ ບຽບ ການລວມກ່ຽວກັບການປະເມີນ ຜົນກະທົບ ຕໍ່ສິ່ງແວດລ້ອມແບບລະອຽດ 2000,

---

[1] ຫົວໜ້າ ພະແນກ ຄຸ້ມຄອງສິ່ງແວດລ້ອມ, ກະຊວງ ອຸດສະຫະກຳ ແລະ ຫັດຖະກຳ, ກົມໄຟຟ້າ, ນະຄອນຫຼວງວຽງຈັນ, ສາທາລະນະລັດປະຊາທິປະໄຕປະຊາຊົນລາວ. E-mail: hhpo@laotel.com

ລະບຽບການວ່າດ້ວຍການປະເມີນຜົນກະທົບຕໍ່ສິ່ງແວດລ້ອມ ແບບລະອຽດສຳລັບໂຄງ ການໄຟຟ້າ 2001, ມາດຕະຖານກ່ຽວກັບການຄຸ້ມຄອງສິ່ງແວດລ້ອມສຳລັບໂຄງການ ໄຟຟ້າ 2001. ມີຫລາຍໆມາດຕາໄດ້ລະບຸກ່ຽວກັບການກະກຽມຮ້ອງຟ້ອງສຳລັບການ ເສຍຫາຍອັນເນື່ອງມາຈາກ ບັນດາເຂື່ອນທີ່ກຳລັງດຳເນີນການຜະລິດ. ມາດຕະຖານກ່ຽວ ກັບການຄຸ້ມຄອງສິ່ງແວດລ້ອມ ສຳລັບໂຄງການໄຟຟ້ານັ້ນກໍ່ຄືນະໂຍບາຍ ແລະ ຂໍ້ແນະ ນຳ ກ່ຽວກັບການຍົກຍ້າຍຈັດສັນໄດ້ກຳນົດໄວ້ວ່າຜູ້ທີ່ໄດ້ຮັບຜົນກະທົບມີສິດທິທີ່ຈະໄດ້ ຮັບຜົນປະໂຫຍດຮ່ວມໂດຍທາງກົງ ແລະ ທາງອ້ອມ. ອັນທີ່ ຈະແຈ້ງທີ່ສຸດແມ່ນກົນໄກ ຮ່ວມຜົນປະໂຫຍດເພື່ອຄວບຄຸມການກໍ່ສ້າງ ແລະ ດຳເນີນງານຂອງບັນດາເຂື່ອນ. ເຖິງ ແນວໃດກໍ່ຕາມ, ກົນໄກດັ່ງກ່າວຂຶ້ນກັບບັນດາສັນຍາໃນລະດັບໂຄງການ.

ປະຊາຊົນລາວປະກອບມີ ບັນດາເຜົ່າ ຫລື ຊົນເຜົ່າ ທີ່ດຳລົງຊີວິດແບບດັ່ງເດີມຂຶ້ນກັບທຳມະ ຊາດ, ມີສິດສະເໝີພາບເທົ່າທຽມກັນ ເຊິ່ງຄຸ້ມຄອງໂດຍລັດຖະທຳມະນູນ, ເນື້ອໃນດັ່ງກ່າວ ໄດ້ລະບຸໄວ້ວ່າ “ລັດຖະບານ ມີນະໂຍບາຍ ກ່ຽວກັບຄວາມເອກະພາດ ແລະ ຄວາມສະເໝີ ພາບ ຂອງບັນດາເຜົ່າໃນຂອບເຂດທົ່ວປະເທດ” ປະຊາຊົນບັນດາເຜົ່າ ມີສິດປົກປັກຮັກສາ, ອະນຸລັກ ແລະ ສົ່ງເສີມຮີດຄອງປະເພນີ ແລະ ວັດທະນາທຳອັນດີງາມຂອງຕົນໄວ້ ນັ້ນກໍ່ຄື ການປົກປັກຮັກສາ, ອະນຸລັກ ແລະ ສົ່ງເສີມຮີດຄອງປະເພນີອັນດີງາມຂອງຊາດ. ຫ້າມທຸກ ການເຄື່ອນໄຫວເພື່ອແບ່ງແຍກ ແລະ ກໍ່ໃຫ້ມີຄວາມແຕກແຍກຄວາມສາມັກຄີພາຍໃນຂອງ ບັນດາເຜົ່າ ແລະ ລັດຖະບານຕ້ອງໝູນໃຊ້ທຸກມາດຕະການເພື່ອປັບປຸງ ແລະ ພັດທະນາເສດ ຖະກິດ-ສັງຄົມ ຂອງປະຊາຊົນບັນດາເຜົ່າ.

ການປະເມີນຜົນກະທົບຕໍ່ສິ່ງແວດລ້ອມແບບລະອຽດ

ການປະເມີນຜົນກະທົບຕໍ່ສິ່ງແວດລ້ອມແບບລະອຽດ ຕ້ອງປະກອບມີການສຶກສາດ້ານສັງ ຄົມ,ສາທາລະນະສຸກ ແລະ ວັດທະນາທຳ ຕາມທີ່ໄດ້ກຳນົດໄວ້ໃນກົດໝາຍວ່າດ້ວຍການ ປົກປັກຮັກສາສິ່ງແວດລ້ອມ 1999, ລະບຽບການລວມວ່າດ້ວຍການປະເມີນຜົນກະທົບຕໍ່ ສິ່ງແວດລ້ອມແບບລະອຽດ ແລະ ລະບຽບການວ່າດ້ວຍການປະເມີນຜົນກະທົບຕໍ່ສິ່ງແວດ ລ້ອມແບບລະອຽດສຳລັບໂຄງການໄຟຟ້າ. ບົດລາຍງານການປະເມີນຜົນກະທົບຕໍ່ສິ່ງ ແວດລ້ອມແບບລະອຽດ ຕ້ອງໄດ້ພັນລະນາກ່ຽວກັບສະພາບດ້ານສິ່ງແວດລ້ອມທຳມະ ຊາດ ແລະ ເສດຖະກິດ-ສັງຄົມ ໃນປະຈຸບັນໃນເຂດພື້ນທີ່ທີ່ໄດ້ຮັບຜົນກະທົບ ແລະ ຕິດ ພັນກັບໂຄງການ. ບົດລາຍງານດັ່ງກ່າວຕ້ອງໄດ້ກຳນົດບັນດາຜົນກະທົບຕໍ່ດ້ານເສດຖະ ກິດ, ສັງຄົມ ແລະ ສິ່ງແວດລ້ອມຈາກໂຄງການ ແລະ ສຶກສາສົມທຽບຢ່າງໜ້ອຍນຶ່ງຫລື ຫລາຍທາງເລືອກທີ່ເປັນໄປໄດ້ຂອງໂຄງການ. ໃນກໍລະນີ, ບ່ອນໃດທີ່ຜົນກະທົບບໍ່ສາ ມາດຫລີກລ້ຽງໄດ້, ບົດລາຍງານຕ້ອງໄດ້ກຳນົດບັນດາຜົນກະທົບເຫົ່ລານັ້ນ ແລະ ນຳສະ ເໜີວິທີການເພື່ອຊົດເຊີຍສຳລັບຜົນກະທົບດັ່ງກ່າວ. ບົດລາຍງານຕ້ອງໄດ້ເລືອກເອົາ ທາງເລືອກໃດນຶ່ງທີ່ດີເລີດສຳລັບໂຄງການ, ເຊິ່ງຈະຕ້ອງມີການປົກປັກຮັກສາຄ່າຂອງ ສິ່ງແວດລ້ອມດີທີ່ສຸດ. ນອກຈາກນັ້ນແລ້ວ, ບົດລາຍງານດັ່ງກ່າວ ຕ້ອງໄດ້ ພິມເຜີຍ

ແຜ່ຂໍ້ມູນ ຂອງໂຄງການໃຫ້ມວນຊົນຊາບ. ລວມທັງການສຶກສາພາກສະໜາມເພື່ອໃຫ້ຜູ້ມີສ່ວນຮ່ວມ ເຂົ້າໃຈເຖິງສະພາບເງື່ອນໄຂທີ່ມີປະຈຸບັນຢ່າງພຽງພໍຢູ່ໃນເຂດພື້ນທີ່ ທີ່ໄດ້ຮັບຜົນກະທົບຈາກໂຄງການ.

ລະບຽບການລວມວ່າດ້ວຍການປະເມີນຜົນກະທົບຕໍ່ສິ່ງແວດລ້ອມແບບລະອຽດ ແລະ ລະບຽບການວ່າດ້ວຍການປະເມີນຜົນກະທົບຕໍ່ສິ່ງແວດລ້ອມແບບລະອຽດ. ສຳລັບໂຄງການໄຟຟ້າ ໄດ້ລະບຸໄວ້ວ່າ ຂະບວນການຕັດສິນບັນຫາທີ່ຕິດພັນກັບເຂື່ອນຕ້ອງໄດ້ເອົາໃຈໃສ່ໄປຄຽງຄູ່ກັນກັບຫລາຍຂັ້ນຕອນ ທີ່ແຕກຕ່າງກັນຂອງຂະບວນການປະເມີນຜົນກະທົບຕໍ່ສິ່ງແວດລ້ອມ.

ກົດໝາຍວ່າດ້ວຍການປົກປັກຮັກສາສິ່ງແວດລ້ອມ ໄດ້ເປັນພື້ນຖານໂຄງປະກອບດ້ານນິຕິກຳ ເພື່ອຄວາມເປັນເອກະພາບກັນໃນການຄຸ້ມຄອງຕໍ່ສິ່ງແວດລ້ອມ ຂອງບັນດາໂຄງການພັດທະນາ ໂດຍມີຈຸດປະສົງເພື່ອການອະນຸລັກສິ່ງແວດລ້ອມ, ນຳໃຊ້ຊັບພະຍາກອນທຳມະຊາດແບບຍືນຍົງ ແລະ ມີການໝູນວຽນເພື່ອປະກອບສ່ວນເຂົ້າໃນການພັດທະນາເສດຖະກິດ-ສັງຄົມແຫ່ງຊາດ ແລະ ຮັບປະກັນຄຸນນະພາບດ້ານສຸຂະພາບ ແລະ ຊີວິດການເປັນຢູ່ຂອງປະຊາຊົນບັນດາເຜົ່າ. ບັນດາຫລັກການເຫລົ່ານັ້ນໄດ້ກຳນົດໄວ້ໃນຫລາຍກົດໝາຍ.

ການເຂົ້າຫາຂໍ້ມູນຂ່າວສານ ແລະ ການມີສ່ວນຮ່ວມຂອງມວນຊົນໃນການຕັດສິນບັນຫາ

ສປປ ລາວ ໄດ້ເປີດກວ້າງໃຫ້ມີການມີສ່ວນຮ່ວມຂອງມວນຊົນ ໂດຍຜ່ານການປຶກສາຫາລື. ປະຊາຊົນສ່ວນໃຫຍ່ໄດ້ມີສ່ວນຮ່ວມໃນການປຶກສາຫາລື ຕໍ່ກັບບັນດາກິດຈະການ ພັດທະນາເສດຖະກິດ ແລະ ສັງຄົມ. ເຖິງແນວໃດກໍ່ຕາມ, ການເຂົ້າຫາຂໍ້ມູນຂ່າວສານ ແລະ ການມີສ່ວນຮ່ວມຂອງມວນຊົນໃນການຕັດສິນບັນຫາສຳລັບການວາງນະໂຍບາຍ ແລະ ວາງແຜນ ຍັງເຮັດບໍ່ທັນໄດ້ດີ ຫລື ຍັງຖືກຈັດຕັ້ງປະຕິບັດບໍ່ພຽງພໍສຳລັບບັນດາກິດຈະກຳຂອງໂຄງການ. ໃນຫລາຍໆໂຄງການທີ່ສຳຄັນ. ຕົ້ນຕໍເຫັນວ່າ ການມີສ່ວນຮ່ວມຂອງມວນຊົນໃນການຕັດສິນບັນຫາຍັງເຮັດບໍ່ທັນໄດ້ດີ. ອີກດ້ານໜຶ່ງ, ການມີສ່ວນຮ່ວມຂອງມວນຊົນຍັງມີໜ້ອຍ.

ປະຈຸບັນຍັງບໍ່ທັນມີລະບຽບການ ສະເພາະກ່ຽວກັບການເຂົ້າຫາຂໍ້ມູນຂອງມວນຊົນ, ເຖິງຢ່າງໃດກໍ່ດີ, ແຕ່ມາດຕາດັ່ງກ່າວໄດ້ກຳນົດໄວ້ໃນຫລາຍກົດໝາຍ ແລະ ລະບຽບການ ທີ່ແຕກຕ່າງກັນ ທີ່ຕິດພັນກັບຮູບແບບການມີສ່ວນຮ່ວມຂອງມວນຊົນ. ບັນຫານີ້ໄດ້ກຳນົດໄວ້ໃນກົດລະບຽບລວມວ່າດ້ວຍ ການປະເມີນຜົນກະທົບຕໍ່ສິ່ງແວດລ້ອມແບບລະອຽດ, ລະບຽບການວ່າດ້ວຍການປະເມີນຜົນກະທົບຕໍ່ສິ່ງແວດລ້ອມແບບລະອຽດ ສຳລັບໂຄງການໄຟຟ້າ ແລະ ຫລາຍກວ່ານັ້ນແມ່ນຢູ່ໃນບົດລາຍງານໂດຍສັງເຂບຂອງຂໍ້ແນະ ນຳ ກ່ຽວກັບ ການມີສ່ວນຮ່ວມຂອງມວນຊົນແຫ່ງຊາດ 2003, ເຊິ່ງໂດຍລວມແລ້ວ

ສ່ວນໃຫ່ຍໄດ້ອີງໃສ່ພື້ນຖານຂອງຂໍ້ແນະນຳກ່ຽວກັບການມີສ່ວນຮ່ວມຂອງມວນຊົນ ຂອງ ຄະນະກຳມະທິການພັດທະນາເສດຖະກິດ-ສັງຄົມ ອະນຸພາກພື້ນອາຊີ- ປາຊີຟິກ. ຂໍ້ແນະ ນຳໄດ້ໃຫ້ນິຍາມກ່ຽວກັບການມີສ່ວນຮ່ວມຂອງມວນຊົນ ແລະ ສ່ວນປະກອບຂອງຂໍ້ແນະ ນຳດັ່ງກ່າວ. ຂໍ້ແນະນຳດັ່ງກ່າວໄດ້ສະເໜີຫລັກການຕົ້ນຕໍທີ່ຕິດພັນກັບຂະບວນການປະ ຊາສຳພັນ ແລະ ການມີສ່ວນຮ່ວມ ແລະ ໃຫ້ຄວາມກະຈ່າງແຈ້ງ (ລວມທັງຕົວຢ່າງ) ກ່ຽວ ກັບການອະທິບາຍຄຳສັບທີ່ນຳໃຊ້ການມີສ່ວນຮ່ວມຂອງມວນຊົນ ໂດຍບັນດາອົງການບໍ່ ແມ່ນລັດຖະບານ ແລະ ຜູ້ໃຫ້ທຶນອື່ນໆ.

ການມີສ່ວນຮ່ວມຂອງມວນຊົນ ໄດ້ກຳນົດໄວ້ໃນຫລາຍກົດໝາຍ ແລະ ລະບຽບການທີ່ ບັງຄັບໃຊ້ກັບແຜນການການພັດທະນານ້ຳ ແລະ ການວາງແຜນການ, ການກໍ່ສ້າງ ແລະ ດຳເນີນງານຂອງເຂື່ອນໂດຍສະເພາະ ລະບຽບການລວມວ່າດ້ວຍການປະເມີນຜົນກະ ທົບຕໍ່ສິ່ງແວດລ້ອມແບບລະອຽດ ແລະ ລະບຽບການວ່າດ້ວຍການປະເມີນຜົນກະທົບຕໍ່ ສິ່ງແວດລ້ອມແບບລະອຽດສຳລັບໂຄງການໄຟຟ້າ. ສົດທິ ແລະ ພັນທະຕໍ່ການປົກປັກ ຮັກສາສິ່ງແວດລ້ອມໄດ້ລະບຸໄວ້ໃນລັດຖະທຳມະນູນ 1991 ແລະ ໃນກົດໝາຍຕ່າງໆ.

ການຄຸ້ມຄອງການພັດທະນາໂຄງລ່າງພື້ນຖານ

ກົດໝາຍວ່າດ້ວຍນ້ຳ ແລະ ຊັບພະຍາກອນແຫລ່ງນ້ຳ 1996 ເປັນເຄື່ອງມືພື້ນຖານດ້ານ ນິຕິກຳໄດ້ລະບຸໄວ້ວ່າ “ອົງການຮັບຜິດຊອບກ່ຽວກັບນ້ຳເປັນຜູ້ກຳນົດມາດຕະຖານຄຸນ ນະພາບນ້ຳດື່ມ ແລະ ນ້ຳທີ່ໃຊ້ແລ້ວ ເຊິ່ງລະບາຍລົງສູ່ແຫ່ງນ້ຳ ຫລື ແຫ່ງອື່ນໆ” ມາດຕະ ຖານຕ່າງໆ ໄດ້ໃຫ້ຄວາມກະຈ່າງແຈ້ງ, ໄດ້ວາງບັນທັດຖານແບບທຳມະດາສຳລັບການ ພັດທະນາແຫລ່ງພະລັງງານ ແລະ ນ້ຳໂດຍມີການສ້າງເຂື່ອນກັນນ້ຳ ເຊັ່ນ: ມາດຕະຖານ ການຄຸ້ມຄອງສິ່ງແວດລ້ອມສຳລັບໂຄງການໄຟຟ້າ ແລະ ມາດຕະຖານເຕັກນິກໄຟຟ້າ ຂອງ ສປປ ລາວ 2004 ທີ່ພັດທະນາຂຶ້ນໂດຍກະຊວງອຸດສາຫະກຳ ແລະ ຫັດຖະກຳກົມ ໄຟຟ້າໂດຍການຊ່ວຍເຫລືອຂອງອົງການຮ່ວມມືສາກົນຍີ່ປຸ່ນ. ນອກຈາກນັ້ນ, ຂໍ້ແນະ ນຳກ່ຽວກັບການຍົກຍ້າຍຈັດສັນແຫ່ງຊາດ 2004, ຂໍ້ແນະນຳກ່ຽວກັບການກວດກາ ຝ່າຍ ທີ່ສາມສຳລັບຂະແໜງພະລັງງານ ແລະ ຄົມມະນາຄົມ 2003, ຂໍ້ແນະນຳກ່ຽວກັບ ການມີ ສ່ວນຮ່ວມຂອງມວນຊົນແຫ່ງຊາດ ໄດ້ກຳນົດທິດທາງກ່ຽວກັບເລື່ອງດັ່ງກ່າວ. ບັນດາມາດ ຕະຖານເຫລົ່ານັ້ນ ໄດ້ພັດທະນາຂຶ້ນມາໂດຍອີງໃສ່ບົດຮຽນ ແລະ ປະສົບການຂອງຂະ ບວນການປະເມີນຜົນກະທົບຕໍ່ສິ່ງແວດລ້ອມຂອງໂຄງການໄຟຟ້ານ້ຳເທີນ 2. ແຕ່ການຈັດ ຕັ້ງປະຕິບັດກັບໂຄງການພັດທະນາເຂື່ອນໄຟຟ້າອື່ນໆ ໃນຂອບເຂດທົ່ວປະເທດຍັງເຮັດ ບໍ່ໄດ້ດີເທື່ອ.

ບາງບົດບັນຍັດຂອງດ້ານນິຕິກຳໄດ້ລະບຸກ່ຽວກັບການຄວບຄຸມຕໍ່ການຄຸ້ມຄອງເຂື່ອນ ທີ່ມີແລ້ວເຊັ່ນ: ກົດໝາຍວ່າດ້ວຍການປົກປັກຮັກສາສິ່ງແວດລ້ອມ, ກົດໝາຍວ່າດວ້ຍ

ໄຟຟ້າ, ລະບຽບການລວມວ່າດ້ວຍການປະເມີນຜົນກະທົບຕໍ່ສິ່ງແວດລ້ອມແບບລະອຽດ, ລະບຽບການວ່າດ້ວຍການປະເມີນຜົນກະທົບຕໍ່ສິ່ງແວດລ້ອມແບບລະອຽດ ສຳລັບໂຄງການໄຟຟ້າ, ມາດຕະຖານການຄຸ້ມຄອງສິ່ງແວດລ້ອມສຳລັບໂຄງການໄຟຟ້າ ແລະ ມາດຕະຖານເຕັກນິກໄຟຟ້າຂອງ ສປປ ລາວ.

ນັບແຕ່ປີ 1996, ສປປ ລາວໄດ້ມີໂຄງປະກອບການປະເມີນຜົນກະທົບຕໍ່ສິ່ງແວດລ້ອມແບບເປັນທາງການໂຄງປະກອບດັ່ງກ່າວ, ໄດ້ຖືກນຳໃຊ້ກັບບັນດາໂຄງການໄຟຟ້າໃໝ່ ເພື່ອຮັບປະກັນຄວາມຈຳເປັນຂອງມາດຕະຖານດັ່ງກ່າວນັ້ນ ໄດ້ຖືກປະຕິບັດຕາມທີ່ປະຊາຊົນລາວຕ້ອງການ. ມັນຕ້ອງຖືກນຳໃຊ້ຄືກັບຂໍ້ແນະນຳເພື່ອປະເມີນໂຄງການຕ້ອງໄດ້ສຳເລັດກ່ອນໂຄງປະກອບດັ່ງກ່າວຖືກຮັບຮອງເອົາຢ່າງເປັນທາງການ. ການຄຸ້ມຄອງເຂື່ອນທີ່ມີແລ້ວ ແລະ ເຂື່ອນທີ່ຈະສ້າງໃໝ່ທີ່ຖືກຮັບຮອງເອົາກ່ອນປະກາດໃຊ້ກົດໝາຍວ່າດ້ວຍການປົກປັກຮັກສາສິ່ງແວດລ້ອມ, ກົດໝາຍວ່າດ້ວຍໄຟຟ້າ, ລະບຽບການລວມວ່າດ້ວຍການປະເມີນຜົນກະທົບຕໍ່ສິ່ງແວດລ້ອມແບບລະອຽດ, ລະບຽບການວ່າດ້ວຍການປະເມີນຜົນກະທົບຕໍ່ສິ່ງແວດລ້ອມແບບລະອຽດສຳລັບໂຄງການໄຟຟ້າ, ເຊິ່ງບັນດາກົດໝາຍ ແລະ ລະບຽບການຂ້າງເທິງນັ້ນ ໄດ້ກຳນົດເປັນມາດຕາສະເພາະໃນໄລຍະເວລາເພື່ອກວດກາຄືນຕໍ່ເຂື່ອນທີ່ມີແລ້ວ ແລະ ເຂື່ອນທີ່ຈະສ້າງໃໝ່ (ເຊິ່ງຈະຕ້ອງໄດ້ປະຕິບັດຕາມມາດຕະຖານເຕັກນິກໄຟຟ້າ ຂອງ ສປປ ລາວ) ຕ້ອງໄດ້ຜັນຂະຫຍາຍອອກເປັນອັນລະອຽດເພື່ອຄວາມປອດໄພດ້ານການດຳເນີນງານຂອງເຂື່ອນໃນຂອບເຂດທົ່ວປະເທດ.

ການປະຕິບັດໃຫ້ສອດຄ່ອງກັບກົດໝາຍ

ກົດໝາຍວ່າດ້ວຍການປົກປັກຮັກສາສິ່ງແວດລ້ອມໄດ້ລະບຸໄວ້ວ່າບັນດາກົດຈະກຳ ແລະ ໂຄງການພັດທະນາທີ່ມີ ຫລື ຄາດວ່າຈະມີຜົນຕໍ່ສິ່ງແວດລ້ອມຕ້ອງໄດ້ນຳສະເໜີບົດລາຍງານການປະເມີນຜົນກະທົບຕໍ່ສິ່ງແວດລ້ອມແບບລະອຽດໃຫ້ແກ່ໜ່ວຍງານຄຸ້ມຄອງ ແລະ ຕິດຕາມກວດກາສິ່ງແວດລ້ອມທີ່ກ່ຽວຂ້ອງ ເພື່ອອອກໃບຢັ້ງຢືນດ້ານສິ່ງແວດລ້ອມກ່ອນໂຄງການເລີ້ມລົງມືກໍ່ສ້າງໂຄງການ, ການປະຕິບັດໃຫ້ສອດຄ່ອງກັບລະບຽບການສຳລັບການປະເມີນຜົນກະທົບຕໍ່ສິ່ງແວດລ້ອມແບບລະອຽດແມ່ນນອນຢູ່ໃນເນື້ອໃນຂອງລະບຽບການ ລວມວ່າດ້ວຍການປະເມີນຜົນກະທົບຕໍ່ສິ່ງແວດລ້ອມແບບລະອຽດ, ລະບຽບການວ່າດ້ວຍການປະເມີນຜົນກະທົບຕໍ່ສິ່ງແວດລ້ອມແບບລະອຽດ ສຳລັບໂຄງການໄຟຟ້າ.

ການປະຕິບັດພັນທະຕໍ່ດ້ານສິ່ງແວດລ້ອມ ແລະ ສັງຄົມລວມທັງຜົນປະໂຫຍດຮ່ວມໄດ້ກຳນົດໄວ້ໃນກົດໝາຍວ່າດ້ວຍການປົກປັກຮັກສາສິ່ງແວດລ້ອມ, ກົດໝາຍວ່າດ້ວຍນ້ຳ ແລະ ຊັບພະຍາກອນແຫລ່ງນ້ຳ, ກົດໝາຍວ່າດ້ວຍໄຟຟ້າ, ລະບຽບການລວມວ່າດ້ວຍການປະເມີນຜົນກະທົບຕໍ່ສິ່ງແວດລ້ອມແບບລະອຽດ, ລະບຽບການວ່າດ້ວຍການປະເມີນຜົນກະທົບຕໍ່ສິ່ງແວດລ້ອມແບບລະອຽດສຳລັບໂຄງການໄຟຟ້າ ແລະ ມາດຕະຖານການ

ຄຸ້ມຄອງສິ່ງແວດລ້ອມສຳລັບໂຄງການໄຟຟ້າ. ນອກຈາກນັ້ນແລ້ວ, ຄວາມຈຳເປັນສະ ເພາະທີ່ເປັນພັນທະໃນເວລາສ້າງບົດລາຍງານດ້ານສິ່ງແວດລ້ອມ ເບື້ອງຕົ້ນ ແລະ ແບບ ລະອຽດຕ້ອງໄດ້ປະຕິບັດຕາມ.

ກົນໄກທາງດ້ານນິຕິກຳເພື່ອຮັບປະກັນແຜນການ ຕ້ອງຖືກຈັດຕັ້ງປະຕິບັດໃຫ້ສອດຄ່ອງ ຢ່າງເຕັມສ່ວນ ຕາມທີ່ລະບຸໄວ້ກົດໝາຍວ່າດ້ວຍການປົກປັກຮັກສາສິ່ງແວດລ້ອມ, ກົດ ໝາຍວ່າດ້ວຍນ້ຳ ແລະ ຊັບພະຍາກອນແຫລ່ງນ້ຳ, ກົດໝາຍວ່າດ້ວຍໄຟຟ້າ, ລະບຽບ ການລວມວ່າດ້ວຍການປະເມີນຜົນກະທົບຕໍ່ສິ່ງແວດລ້ອມແບບລະອຽດ, ລະບຽບການ ວ່າດ້ວຍການປະເມີນຜົນກະທົບຕໍ່ສິ່ງແວດລ້ອມແບບລະອຽດ ສຳລັບໂຄງການໄຟຟ້າ ແລະ ມາດຕະຖານການຄຸ້ມຄອງສິ່ງແວດລ້ອມສຳລັບໂຄງການໄຟຟ້າ. ບົດບັນຍັດສຳ ລັບການກວດກາຈາກຂ້າງນອກຂອງການຈັດຕັ້ງປະຕິບັດ ແລະ ປະຕິບັດຕາມໄດ້ລະບຸ ໄວ້ໃນຂໍ້ແນະນຳກ່ຽວກັບການກວດກາຝ່າຍທີ່ສາມ.

ສປປ ລາວ ຍັງບໍ່ທັນມີເຄື່ອງມືດ້ານກົດໝາຍສະເພາະ ເພື່ອໃຫ້ສິ່ງກະຕຸກຊຸກຍູ້ ຫລື ປັບ ໃໝສຳລັບການບໍ່ປະຕິບັດຕາມຂໍ້ຕົກລົງ ຫລື ສັນຍາວ່າດ້ວຍການກໍ່ສ້າງເຂື່ອນ. ເຖິງແນວ ໃດກໍ່ຕາມ, ບຸກຄົນ ແລະ ການຈັດຕັ້ງທີ່ລະເມີດກົດໝາຍ ແລະ ລະບຽບການຕ່າງໆ ໄດ້ ຖືກພິຈາລະນາວ່າກະທຳຜິດຕໍ່ກົດໝາຍ. ການປັບໃໝຕໍ່ການກະທຳຜິດໄດ້ກຳນົດໄວ້ສະ ເພາະໃນກົດໝາຍວ່າດ້ວຍການປົກປັກຮັກສາສິ່ງແວດລ້ອມ, ກົດໝາຍວ່າດ້ວຍ ໄຟຟ້າ ແລະ ລະບຽບການລວມວ່າດ້ວຍການປະເມີນຜົນກະທົບຕໍ່ສິ່ງແວດລ້ອມ.

ບັນດາມາດຕະການສຳລັບສະກັດກັ້ນ ແລະ ຢຸດຕິການສ້ໍລາດບັງຫລວງໃນຂະບວນການ ກໍ່ສ້າງເຂື່ອນ ແລະ ດຳເນີນງານໄດ້ລະບຸໄວ້ໃນຫລາຍກົດໝາຍທີ່ກ່ຽວຂ້ອງເຊັ່ນ:ກົດໝາຍ ວ່າດ້ວຍລັດຖະບານແຫ່ງ ສປປລາວ ສະບັບເລກທີ່ No. 01/95 (ມາດຕາ 7 ແລະ 10 ພາລະບົດບາດ ແລະ ໜ້າທີ່ຂອງລັດຖະບານ), ເຊິ່ງອັນທີ່ພົ້ນເດັ່ນທີ່ສຸດ ແມ່ນລັດຖະບານ ແຫ່ງ ສປປ ລາວໄດ້ໃຫ້ສິດແບບເດັດຂາດແກ່ອົງການຈັດຕັ້ງ ທີ່ມີພາລະບົດບາດ ແລະ ໜ້າທີ່ ເຮັດວຽກງານກວດກາລັດ, ການຕໍ່ສູ້ກັບການລະເມີດກົດໝາຍ, ການສ້ໍລາດບັງ ຫລວງ, ການຊົດເຊີຍຕໍ່ການຮ້ອງຟ້ອງຂອງປະຊາຊົນ ອີງໃສ່ກົດໝາຍວ່າດ້ວຍອາຍາ, 1989.

ການອະນຸລັກແຫລ່ງຊັບພະຍາກອນຊີວະນາໆພັນ ແລະ ລະບົບນິເວດວິທະຍາ

ສປປ ລາວ ຍັງບໍ່ທັນໄດ້ພັດທະນາກົດໝາຍ ຫລື ລະບຽບການສະເພາະເພື່ອສະກັດກັ້ນ, ຫລຸດຜ່ອນ ຫລື ບັນເທົາຜົນກະທົບຈາກການກໍ່ສ້າງເຂື່ອນຕາມສາຍນ້ຳ, ເຊິ່ງໄຫລ ຜ່ານ ເຂດປ່າສະຫງວນ ຫລື ເຂດທີ່ຢູ່ອາໃສຂອງສັດປ່າ. ເຖິງແນວໃດກໍ່ຕາມ, ສິ່ງທີ່ກ່ຽວ ຂ້ອງໂດຍທາງອ້ອມ ຕໍ່ປະເດັນບັນຫາເຫລົ່ານັ້ນ ໄດ້ກຳນົດໄວ້ໃນກົດໝາຍວ່າດ້ວຍການ ປົກປັກຮັກສາສິ່ງແວດລ້ອມ, ກົດໝາຍວ່າດ້ວຍນ້ຳ ແລະ ຊັບພະຍາກອນແຫລ່ງນ້ຳ ແລະ

ກົດໝາຍວ່າດ້ວຍໄຟຟ້າ.

ຫລາຍກົດໝາຍໄດ້ຕິດພັນໂດຍກົງກັບການປົກປັກຮັກສາ ຊະນິດພັນປະເພດທີ່ຫາຍາກ ແລະ ໄກ້ຈະສູນພັນ. ສ່ວນນິຕິກຳອື່ນໆໄດ້ຕິດພັນປະເດັນການອະນຸລັກສິ່ງແວດລ້ອມ ຫລາຍກວ່າ. ບັນດາເຄື່ອງມືດ້ານນິຕິກຳເຫລົ່ານັ້ນ ປະກອບມີຢູ່ໃນກົດໝາຍວ່າດ້ວຍນ້ຳ ແລະ ຊັບພະຍາກອນແຫລ່ງນ້ຳ, ກົດໝາຍວ່າດ້ວຍການປົກປັກຮັກສາສິ່ງແວດລ້ອມ, ກົດໝາຍວ່າດ້ວຍປ່າໄມ້ (1996) ແລະ ກົດໝາວ່າດ້ວຍໄຟຟ້າ.

ແມ່ນ້ຳຮ່ວມກັນ

ມີຫລາຍເປົ້າໝາຍແຫ່ງຊາດ ແລະ ເຄື່ອງມືດ້ານນິຕິກຳໄດ້ກຳນົດສຳລັບການຮ່ວມ ມືໃນການຄຸ້ມຄອງບໍລິຫານຊັບພະຍາກອນແຫລ່ງນ້ຳຮ່ວມກັນ, ປະກອບມີຜົນກະທົບຂອງເຂື່ອນ, ແຜນພັດທະນາເສດຖະກິດ ແລະ ສັງຄົມແຫ່ງຊາດ 2001-2005 ຂອງຄະນະກຳມະການແຜນການ ແລະ ການຮ່ວມມື, ແຜນຍຸດທະສາດແຫ່ງຊາດສຳລັບການພັດທະນາອ່າງແມ່ນ້ຳຂອງ 2002, ສົນຍາວ່າດ້ວຍການຮ່ວມມືສຳລັບການພັດທະນາແບບຍືນຍົງ ຂອງອ່າງແມ່ນ້ຳຂອງ 1995 ແລະ ກົດໝາຍວ່າດ້ວຍນ້ຳ ແລະ ຊັບພະຍາກອນແຫລ່ງນ້ຳ.

ສາຍນ້ຳຂອງເປັນສາຍນ້ຳຮ່ວມ ຂອງບັນດາປະເທດອະນຸພາກພື້ນແມ່ນ້ຳຂອງ, ເຊິ່ງໄດ້ ໄຫລຜ່ານສອງ ຫລື ຫລາຍປະເທດ ແລະ ສະໜອງໃຫ້ແກ່ການສະໜັບສະໜູນໂຄງການ ລວມທັງໂຄງການໄຟຟ້ານ້ຳຕົກ. ດັ່ງທີ່ຮູ້ນຳກັນແລ້ວວ່າການຮ່ວມມື ແລະ ໄມຕີຈິດຂອງ ບັນດາປະເທດສະມາຊິກອະນຸພາກພື້ນແມ່ນ້ຳຂອງມີຄວາມຈຳເປັນໃນການນຳໃຊ້ ຢ່າງ ພຽງພໍ ແລະ ການປົກປັກຮັກສາສາຍນ້ຳສາກົນ. ອີງໃສ່ນະໂຍບາຍ ທີ່ລະບຸໄວ້ໃນເປົ້າ ໝາຍ ລະດັບສາກົນຂອງໂຄງການກ່ຽວກັບແມ່ນ້ຳສາກົນຕ້ອງໄດ້ປະຕິບັດ ໂອກາດທີ່ ເປັນໄປໄດ້ ກ່ອນເວລາທີ່ກຳນົດໄວ້. ຜົນປະໂຫຍດຂອງແຕ່ລະປະເທດຈຳເປັນຕ້ອງໄດ້ ແຈ້ງການໃຫ້ບັນດາປະເທດສະມາຊິກອື່ນຊາບຢ່າງເປັນທາງການກ່ຽວກັບໂຄງການທີ່ນຳ ສະເໜີ ແລະ ລາຍລະອຽດຂອງໂຄງການ.

ບັນດາຂໍ້ຕົກລົງ ແລະ ສົນທິສັນຍາສາກົນທີ່ຕິດພັນກັບການຄຸ້ມຄອງຊັບພະຍາກອນ ແຫລ່ງນ້ຳຮ່ວມກັນ, ເຊິ່ງ ສປປ ລາວ ໄດ້ລົງລາຍເຊັນ ຫລື ເຂົ້າຮ່ວມເປັນປະເທດພາຄີໃຫ້ ສັດຕະຍາບັນປະກອບມີ: (ກ) ສົນທິສັນຍາສາກົນວ່າດ້ວຍການກາຍເປັນທະເລຊາຍ (ຮອງຮັບໃນປີ 1996), (ຂ) ສົນທິສັນຍາວ່າດ້ວຍການອະນຸລັກຊີວະນາໆພັນ,1992 (ຮັບຮອງໃນປີ1996).ນອກຈາກນັ້ນແລ້ວ ສປປລາວ ຍັງໄດ້ເຂົ້າເປັນພາຄີຂອງສົນທິສັນ ຍາສາກົນວ່າດ້ວຍການຄ້າຂາຍສັດປ່າ ແລະ ພືດພັນທີ່ຫາຍາກ ແລະ ໄກ້ຈະສູນພັນ, ໃນ ຂະບວນການດັ່ງກ່າວ ສປປ ລາວ ກຳລັງເຂົ້າຮ່ວມເປັນພາຄີ ສົນທິສັນຍາຣາມຊາ ກ່ຽວ ກັບດິນທາມທີ່ມີຄວາມສຳຄັນໃນລະດັບສາກົນ.

ຂໍ້ແນະນຳ

ໃນອານາຄົດ, ສປປ ລາວ ຈຳເປັນຕ້ອງພະຍາຍາມໂດຍກົງເພື່ອພັດທະນາ, ດັດແກ້ ແລະ ຈັດຕັ້ງປະຕິບັດບັນດາໂຄງປະກອບທາງດ້ານນິຕິກຳທີ່ມີເພື່ອເອື້ອອຳນວຍ ແລະ ສົ່ງເສີມ ການພັດທະນາແບບຍືນຍົງຂອງເຂື່ອນ ແລະ ພື້ນຖານໂຄງລ່າງອື່ນໆກ່ຽວກັບນ້ຳຕໍ່ດ້ານ ເສດຖະກິດ, ສັງຄົມ, ການເງິນ ແລະ ສິ່ງແວດລ້ອມ.

ປະຈຸບັນ, ບັນດາລະບຽບວ່າດ້ວຍການປະເມີນຜົນກະທົບຕໍ່ສິ່ງແວດລ້ອມແບບລະອຽດ ໄດ້ນຳໃຊ້ກັບບາງໂຄງການທີ່ຕັ້ງຢູ່ໃນບາງພາກຂອງປະເທດ ເຫັນວ່າຈະຕ້ອງໄດ້ປັບປຸງ ໃນຕໍ່ໜ້າ. ການດັດແກ້ປັບປຸງຈະຕ້ອງໄດ້ອີງໃສ່ພື້ນຖານການກວດຄືນກ່ຽວກັບຄວາມ ຂາດແຄນທາງດ້ານການບໍລິຫານຈັດການ ແລະ ທາງ ດ້ານເຕັກນິກ, ຊ່ອງຫວ່າງ ແລະ ຄວາມຮັບຜິດຊອບແບບຊ້ຳຊ້ອນກັນລະຫວ່າງບັນດາກະຊວງທີ່ກ່ຽວຂ້ອງ. ແນ່ນອນ, ການນຳໃຊ້ແບບກວ້າງຂວາງ ຂອງໂຄງປະກອບທາງດ້ານການປະເມີນຜົນກະທົບຕໍ່ສິ່ງ ແວດລ້ອມແບບລະອຽດຍັງກາຍເປັນເປົ້າໝາຍໃຫຍ່ເພື່ອເປັນການສະໜັບສະໜູນຂອງ ລະບົບການຄຸ້ມຄອງ.

ເພື່ອຮັບປະກັນການພັດທະນາຂະແໜງໄຟຟ້າ ແລະ ນ້ຳ ໃນ ສປປ ລາວ, ລັດຖະບານ ແຫ່ງ ສປປ ລາວ ຈະຕ້ອງໄດ້ພັດທະນາ ແລະ ຂັນຂະຫຍາຍໂຄງປະກອບການຄຸ້ມຄອງ ແລະ ນິຕິກຳເພື່ອເປັນທິດທາງ ແລະ ເອື້ອອຳນວຍການພັດທະນາຂະແໜງໄຟຟ້າຢ່າງມີ ປະສິດທິຜົນ. ລັດຖະບານແຫ່ງ ສປປ ລາວ ຈະໄດ້ສືບຕໍ່ຂະບວນການປັບປຸງເພື່ອໃຫ້ມີ ໂຄງປະກອບດ້ານນິຕິກຳເທົ່າທຽມກັນ ແລະ ມີປະສິດທິຜົນ, ເຊິ່ງຕ້ອງໃຫ້ການພິຈາລະ ນາ ເພື່ອຜົນປະໂຫຍໄລຍະຍາວຂອງປະເທດນັ້ນກໍ່ຄືສິດທິແບບສົມເຫດສົມຜົນຂອງ ທຸກ ພາກສ່ວນທີ່ມີສ່ວນຮ່ວມກັບ ຫລື ໄດ້ຮັບຜົນກະທົບໂດຍຂະແໜງໄຟຟ້າ. ເປົ້າໝາຍ ຕົ້ນ ຕໍເພື່ອບັນລຸໄດ້ຄາດໝາຍດັ່ງກ່າວຕ້ອງປະກອບມີ: (ກ) ກວດຄືນບັນດານິຕິກຳ ຄຸ້ມຄອງ ມະຫາພາກຂະແໜງໄຟຟ້າ; (ຂ) ຍົກລະດັບຄວາມເຂັ້ມແຂງໃຫ້ແກ່ບັນດາກົດໝາຍເພື່ອ ປົກປັກຮັກສາສິ່ງແວດລ້ອມ; (ຄ) ຍົກລະດັບຄວາມເຂັ້ມແຂງໃນການບັງຄັບໃຊ້ ແລະ ຕິດ ຕາມກວດກາສິ່ງແວດລ້ອມ; (ຍ) ພັດທະນາຄູ່ມື ແລະ ຂໍ້ແນະນຳເພີ່ມເຕີມທີ່ຕິດພັນມາດ ຖານເຕັກນິກໄຟຟ້າ (ງ) ພັດທະນາໂຄງປະກອບດ້ານນິຕິກຳ ໃຫ້ສອດຄ່ອງກັບການລົງ ທຶນຂອງສາກົນ. ແຜນການນະໂຍບາຍ ການຄຸ້ມຄອງນັ້ນກໍ່ຄື ຜົນກະທົບດ້ານສິ່ງແວດ ລ້ອມຂອງເຂື່ອນ ແລະ ການພັດທະນາຊັບພະຍາກອນແຫລ່ງນ້ຳ ຈຳເປັນຕ້ອງມີການປະ ສານງານທີ່ຕິດພັນກັນຢ່າງມີປະສິດທິຜົນ, ພາຍໃຕ້ການຊີ້ ນຳຂອງອົງການທີ່ກ່ຽວຂ້ອງ ທີ່ຮັບຜິດຊອບໃນການຄຸ້ມຄອງອ່າງໂຕ່ງນ້ຳໂດຍລວມ. ປະເດັນ ດັ່ງກ່າວຈຳເປັນຕ້ອງກຳ ນົດເປັນຂັ້ນຕ້ອນທີ່ບັງຄັບໃຊ້.

ການສ້າງຈິດສຳນຶກໃຫ້ແກ່ມວນຊົນ ແລະ ອົງການຂອງລັດ ກ່ຽວກັບບັນດາເອກະສານ ຄຸ້ມຄອງສິ່ງແວດລ້ອມ ແລະ ສັງຄົມ ຂອງ ສປປ ລາວ ຈະຕ້ອງໄດ້ປັບປຸງໃຫ້ດີຂຶ້ນ. ການ

ປະມວນ ແລະ ຄວາມຮັບຮູ້ທາງດ້ານນິຕິກຳ ແລະ ຄວາມເຂັ້ມແຂງທາງດ້ານໂຄງປະກອບ ຂອງກົດໝາຍຍັງມີຂໍ້ຈຳກັດ, ເຊິ່ງປະກອບມີບົດບັນຍັດສຳລັບບັງຄັບໃຊ້ ແລະ ປະຕິບັດ ຕາມ, ການປັບໃໝທາງແພ່ງ ແລະ ອາດຍາ ເຊັ່ນ ການຕິເຕືອນ, ການປັບໃໝ,ການຖອນ ໃບອະນຸຍາດ, ການປັບໃໝທາງແພ່ງ ແລະ ອາດຍາ ຈຳເປັນອັນຮີບດ່ວນທີ່ຈະຕ້ອງໄດ້ ເອົາໃຈໃສ່. ການບັງຄັບໃຊ້ ແລະ ຕິດຕາມກວດກາດ້ານສິ່ງແວດລ້ອມ ຕ້ອງໄດ້ປັບປຸງໃຫ້ ມີຄວາມເຂັ້ມແຂງ. ໃນເວລາດຽວກັນນັ້ນ, ການປັບປຸງຄວາມສາມາດແຫ່ງ ຊາດທີ່ຕິດພັນ ກັບໂຄງປະກອບທາງດ້ານນິຕິກຳ ແລະ ຂະບວນການວາງແຜນຂອງຂະ ແໜງຊັບພະຍາ ກອນແຫລ່ງນ້ຳລວມມີການຄຸ້ມຄອງແຫລ່ງນ້ຳແບບປະສົມປະສານຈຳ ເປັນຕ້ອງໄດ້ປັບ ປຸງຄືນໃໝ່.

Thailand Water Resources Development

A review of the existing policy and legislation framework

Dr. Bantita Pichyakorn[1]

Under the current (ninth) National Economic and Social Development Plan (NESDB) for 2002-2006, water resources management is a key issue. The plan emphasises the need to preserve "bio-diversity, efficient utilisation of water resources, and the restoration of soil fertility to support increased agricultural productivity, as well as support conservation, and improved economic utilisation of energy". Although NESDB does not make it clear what the elements of water resources management are, it supports "increased agricultural productivity as well as the improved economic utilisation of energy" rather than encouraging dam construction as was the case in the past.

There are also four plans/policies relevant to the national water resources/dam management aspect: (a) the policy of the Thai Government 2005-2008; (b) the Policy and Perspective Plan for Enhancement and Conservation of National Environmental Quality, 1997-2016 (hereafter referred to as the Policy and Perspective Plan); (c) the policy of the Ministry of Natural Resources and Environment, 2005-2008; (d) and the National Water Resources Policy, Department of Water Resources. The key elements of water resources/dam management in these plans/policies are detailed below.

Recognition and safeguarding of rights and entitlements

While specific legislation (the draft Water Act) has yet to be adopted for regulating rights to water, there are some laws that have provisions relevant to rights over water. The 1992 Civil and Commercial Code states that "water belongs to the State and is therefore regarded as public property". The State Irrigation Act allows the competent authority to nationalise land with the granting of compensation if the State wishes to use it for irrigation development plans. The Promotion of Energy Conservation Act, 1992 states that the National Committee on Energy Policy has the authority to issue any measures related to national energy, including

[1] Second Secretary, Department of International Organizations, Ministry of Foreign Affairs, Sri Ayudhya Road, Bangkok 10400, Thailand. E-mail: bantitap@mserv.mfa.go.th.

water resources. The Metropolitan Waterworks Act, 1967 allows private entities to construct and operate their own waterworks systems in certain areas. The Private Irrigation Act, 1939 authorises individuals or groups of individuals to acquire and develop water resources by means of private irrigation systems. The draft Water Act, however, makes it clear that water belongs to the public or is State property.

The Thai Constitution of 1997 is probably most relevant to the provision and protection of rights to livelihood and a healthy environment and culture, although it does not contain any specific provisions regarding compensation to persons adversely affected by the construction and/or operation of large dams. The only law that has a provision on compensation is the Enhancement and Conservation of National Environmental Quality Act, 1992. It states that a person has the right to receive compensation in the case of damage caused by the spread of pollution or changes in the environment arising from activities or projects initiated or sponsored by the State. However, no clear explanation is given of the nature and type of compensation that people could receive. The Act on Establishment of Administrative Courts and Administrative Court Procedure, 1999 provides a channel for affected people to seek redress of grievances or injury resulting from an act or omission by administrative agencies or State officials or in disputes in connection with administrative contracts.

Currently, no specific provisions are provided in Thai legislation for a benefit-sharing mechanism or reparation for losses caused by existing dams However, the Constitution confirms the right of persons to bring a case against a State agency, State enterprise, local government organisation or other State authority that is a juristic entity under Thai law, for acts or omissions by government officials or employees. Provision in the Enhancement and Conservation of National Environmental Quality Act for affected persons to obtain compensation for losses arising from the spread of pollution may be applied for handling reparation claims for losses caused by dams. The Act of Establishment of Administrative Courts and Administrative Court Procedure affirms the right of any person to seek redress of grievance or injury caused by an act or omission by an administrative agency or State official or any person who is in dispute in connection with an administrative contract. This could include reparation claims for losses caused by existing dams.

No provisions have been made in either the Constitution or any legal instruments for protecting the rights of indigenous or tribal peoples, including participation in decision-making.

Environmental impact assessment

The Constitution states that projects or activities that may cause significant impacts on the environment cannot be carried out unless an environmental impact assessment (EIA) has

been conducted. The same requirement is found in the Enhancement and Conservation of National Environmental Quality Act. In addition, a number of related Ministerial Notifications were issued between 1992 and 2000. EIAs are required for national and sub-national water development plans. The Ministry of Science, Technology, and Environment Notifications identify the scale of water development projects that are required to carry out EIAs. This condition also applies to the planning, construction, and/or operation of large dams.
An Annex to the Ministry of Science, Technology and Environment Notification, 1992, states that EIA reports must provide information on, and an analysis of: (a) the state of the environment (physical); (b) the state of biotic resources; (c) human use value; and (d) quality of life. With regard to (c) and (d), EIAs must examine the social, health and cultural aspects. During the EIA preparation process, consultations between the relevant agencies and representatives from local communities and independent experts are required. However, EIAs do not include post-project assessment/audits. As such, mitigation measures based on the results of post-project assessment/audits are not specified.

Public access to information, and public participation in decision-making

There is no specific provision governing public access to information related to water resources management, planning, construction and operation of dams. However, no restrictions are placed on public access to such information. The Constitution states that people have the right of access to information that is in possession of State agencies, State enterprises or local government organisations. However, if information disclosure may affect national security, public safety or the interests of other persons, it may not be revealed. The Constitution also states that "a person shall have the right to participate in the decision-making process of State officials in the performance of administrative functions that affect or may affect his or her rights and liberties, as provided by law". This provision is a general requirement and thus applies to water development projects. The Royal Decree on Guidelines and Procedures on Good Governance, 2003 states that a public hearing must be arranged prior to the operation of any project.

The Enhancement and Conservation of National Environmental Quality Act confirms the concept by ensuring that a person has the right to receive from the Government information/data concerning the enhancement and conservation of national environmental quality. The Official Information Act, 1997 affirms the right of the public to inspect official information and states that State agencies have the duty to publish official information in the *Government Gazette.*

Although there is no specific law applicable to transparency of decision-making on dams, the procedures for decision-making related to dams seems to be acceptably transparent. The

Constitution provides for a channel through which concerned stakeholders who are not satisfied with a government decision may present a petition requesting a timely explanation of the rationale behind the decision.

Infrastructure management

The provision of a clear, common set of criteria and/or guidelines for developing water and energy resources by using dams has not been made in any legal instrument. However, certain provisions in the State Irrigation Act, 1942 may be relevant.

There are no legally-binding provisions that require improvements in the operational performance and safety of existing dams following periodic monitoring and/or reviews. However, the State Irrigation Act may be applied for this purpose as it states that one of the duties of the Department of Irrigation is to maintain dams; this implies making improvements in the operational performance and safety of existing dams. In addition, since there are no specific legally-binding provisions on licensing and/or operating dams, the State Irrigation Act may be interpreted as applicable.

Compliance

There is no provision on compliance specified in Thai legislation. Nonetheless, the Act of Establishment on Administrative Courts and Administrative Court Procedure, 1999 provides a legal procedure for seeking compensation and redress for a grievance or injury resulting from an act or omission by an administrative agency or State official, or when there is a dispute in connection with an administrative contract. The Court may order the halting, suspension or even invalidation of the approval of a project. This may be used to ensure that dams are constructed or operated appropriately. If not, the State agencies concerned may be considered liable and prosecuted for non-compliance.

Currently, there is no legally-binding requirement in place for compliance with any social and environmental commitments, including benefit-sharing, or for ensuring that compliance plans are fully implemented. There are no penalties for non-compliance and no legally-binding measures for requiring external reviews of implementation and compliance.

Conservation of aquatic ecosystems and biological resources

Although there are no specific provisions for protecting rivers flowing through protected areas, some sections of the National Protected Areas Act, 1964 (amended in 1979) may be relevant to this purpose. The Act defines the meaning of “protected forests” as including

mountains, creeks, marshes, swamps, waterways, lakes, islands and unoccupied land adjacent to the sea. The Act states that changes of areas, or the withdrawal of parts or the whole of protected forests, may only be made by a Ministerial Regulation. However, the State is allowed to use protected forests or parts of it for the benefit of the State. This can be done by order of the Minister of Agriculture and Cooperatives. Although the Act protects rivers (waterways) located within protected forests, no specific criteria are provided for selecting rivers for such protection. Currently, no measures are in place for preventing, minimising, and/or mitigating negative impacts of dams on rivers flowing through protected areas.

The Wildlife Protection and Conservation Act, 1992 provides protection for endangered species. However, there are currently no measures for preventing, minimising and/or mitigating the negative impacts of dams on such species.

Shared rivers

Thailand is a Party to the 1995 Mekong Agreement. As a "downstream" country, Thailand is vulnerable to upstream dam developments such as those constructed on the mainstream of the Mekong River in China. Thailand does not yet have national legislation that provides for cooperation in managing shared water resources. It is hoped that the draft Water Act, which expects to establish a National Water Resources Committee as well as River Basin Committees will also mandate them to deal with (a) water management, (b) allocation of rights to use water, (c) settlement of disputes between river basins, and (d) encouraging public participation and public hearings at the national and sub-national levels. The draft Water Act also requires the National Water Resources Committee to apply comments and views expressed by the public in drafting the national policy.

Recommendations

A comprehensive national policy or strategy for water resources development has yet to be approved that incorporates clear commitments to public access to information, broad public participation in decision-making and a full EIA process. Such a policy or strategy is urgently needed. Although the existing Thai policy and legislation framework could support the application of many of the WCD Strategic Priorities, for it to be more supportive may require the following changes.

Changes in national development policy

NESDP is the most important development policy of Thailand. However, the issue of

environmental degradation is not sufficiently dealt with by NESDP. The Policy and Perspective Plan is a 20-year plan. It is recommended that the schedule for updating or amending these two plans be rearranged to allow policy planners to take into account changes in economic, social and environment factors when drafting the next NESDP and Policy and Perspective Plan. This will ensure that the two plans are more consistent and that they complement each other to a much greater degree than at present.

Although water resources development remains one of the key issues in NESDP, currently a clear policy on water development is not provided. A specific section should be devoted to setting out a clear direction on how water resources should be developed, with special reference to the construction of large dams.

Government policy should specify that benefits to the public arising out of the use of water resources will be promoted and protected. In particular, the role of the Government in solving water issues must be specified.

More specific, result-based and time-oriented targets need to be adopted in the Ministry of Natural Resources and Environment policy to ensure that the policy is more practical and assessable. Key performance indicators need be developed, as the Ministry is a leading agency in water resources development.

Changes in legislation

Currently, no legislation is fundamentally contrary to the WCD Strategic Priorities. However, the rights of vulnerable groups (such as indigenous people, women and minority groups) should be specifically addressed. Past and current performance of existing dams should also be assessed.

Since the EIA mechanism is now being reviewed, changes should be made to ensure that access by the public is possible at all stages of an EIA. The law should also require effective and open use of EIA results in the decision-making process.

Dispute settlement through the Administrative Court should be exempted from court fees. Water rights should be clearly recognised in the forthcoming Water Act, thus giving the public full access to activities and the decision-making process.

การพัฒนาทรัพยากรน้ำในประเทศไทย

การทบทวนโครงสร้างด้านนโยบายและกฎหมายที่มีอยู่ที่เกี่ยวข้องกับการจัดการทรัพยากรน้ำ

ดร. บัณฑิตา พิชญากร[1]

โครงสร้างนโยบายและกฎหมายของไทยที่มีอยู่ในปัจจุบันมิได้ขัดแย้งกับยุทธศาสตร์หลัก 7 ประการของรายงาน WCD แต่แท้จริงแล้ว นโยบายและกฎระเบียบของไทยมีหลักการและสาระที่ใกล้เคียงกับยุทธศาสตร์หลัก 4 ประการ จาก ยุทธศาสตร์ 7 ประการของรายงาน WCD ยุทธศาสตร์หลักที่เหลืออีก 3 ประการนั้นเกี่ยวพันกับการใช้อำนาจของรัฐและความรับผิดของรัฐ ซึ่งเป็นเรื่องยากที่จะกำหนดไว้ในนโยบายและกฎหมาย

ตามแผนพัฒนาเศรษฐกิจและสังคมแห่งชาติ ฉบับที่ 9 (แผนพัฒนาฯ) ซึ่งมีผลบังคับใช้ระหว่างปี พ.ศ. 2545 - 2549 การจัดการทรัพยากรน้ำก็ยังคงเป็นประเด็นสำคัญอีกประเด็นหนึ่งซึ่งแผนพัฒนาฯ นี้ได้เน้นให้เห็นถึงความจำเป็นในการอนุรักษ์ความหลากหลายทางชีวภาพ และการใช้ทรัพยากรน้ำอย่างมีประสิทธิภาพ การฟื้นฟูธาตุอาหารในดินเพื่อส่งเสริมประสิทธิภาพในการผลิตทางด้านเกษตรกรรมเพิ่มสูงขึ้น ตลอดจนสนับสนุนให้เกิดการอนุรักษ์ และการปรับปรุงการใช้พลังงานในทางเศรษฐกิจ แม้ว่า แผนพัฒนาฯ จะไม่ได้ระบุชัดเจนว่าปัจจัยในการจัดการทรัพยากรน้ำหมายถึงปัจจัยใดบ้าง แต่แผนพัฒนาฯ ส่งเสริมให้เกิดประสิทธิภาพในการผลิตทางด้านเกษตรกรรมเพิ่มขึ้น รวมทั้งการส่งเสริมให้มีการปรับปรุงการใช้พลังงานเพื่อประโยชน์ทางเศรษฐกิจ มากกว่าที่จะสนับสนุนให้เกิดการสร้างเขื่อนดังที่ปรากฏในแผนพัฒนาฯ ในอดีต

นอกจากนี้ ยังมีแผน/นโยบายอีก 4 ฉบับที่เกี่ยวข้องกับการพัฒนาทรัพยากรน้ำ ได้แก่

(ก) นโยบายรัฐบาลสำหรับ ปี พ.ศ. 2548 - 2551

(ข) นโยบายและแผนวิสัยทัศน์เพื่อการส่งเสริมและอนุรักษ์คุณภาพสิ่งแวดล้อมแห่งชาติ พ.ศ. 2540 - 2559 ดังจะเรียกต่อไปนี้ว่า **"นโยบายและแผนวิสัยทัศน์ฯ"**

(ค) นโยบายกระทรวงทรัพยากรธรรมชาติและสิ่งแวดล้อม ปี พ.ศ. 2548 - 2551

(ง) นโยบายว่าด้วยทรัพยากรน้ำแห่งชาติ กรมทรัพยากรน้ำ

---

[1] กองกิจการเพื่อการพัฒนา, กรมองค์การระหว่างประเทศ, กระทรวงการต่างประเทศ, ถนนศรีอยุธยา, กรุงเทพมหานคร 10400, ประเทศไทย. Email: bantitap@mserv.mfa.go.th

ซึ่งปัจจัยหลักของการพัฒนาทรัพยากรน้ำของไทยที่กำหนดไว้ในแผนหรือนโยบายต่างๆ เหล่านี้ สามารถจำแนกได้ ดังนี้

การรับรองและการปกป้องซึ่งสิทธิและการได้มาซึ่งสิทธิเหนือทรัพยากรน้ำ

ขณะนี้ กระทรวงทรัพยากรธรรมชาติและสิ่งแวดล้อมกำลังดำเนินการยกร่างกฎหมายน้ำ เพื่อวางกฎระเบียบที่เกี่ยวข้องกับสิทธิเหนือทรัพยากรน้ำ การพัฒนาและการจัดการทรัพยากรน้ำอย่างเป็นระบบและอย่างบูรณาการ เนื่องจากในปัจจุบันมีกฎหมายและระเบียบหลายฉบับที่บัญญัติเกี่ยวกับสิทธิที่เกี่ยวข้องกับทรัพยากรน้ำ และในขณะที่ร่างกฎหมายน้ำนี้ยังไม่เสร็จสมบูรณ์ อาจนำกฎหมายทั่วไปและกฎหมายเฉพาะบางฉบับที่เกี่ยวข้องกับการพัฒนาและจัดการทรัพยากรน้ำมาบังคับใช้ก่อน กฎหมายที่สำคัญได้แก่

ประมวลกฎหมายแพ่งและพาณิชย์ พ.ศ. 2535 รับรองสิทธิเหนือทรัพยากรน้ำในทางน้ำ และทะเลสาบไว้ใน มาตรา 1304 (2) ว่า "สาธารณสมบัติของแผ่นดินนั้น รวมทรัพย์สินทุกชนิดของแผ่นดินซึ่งใช้เพื่อสาธารณประโยชน์ หรือสงวนไว้เพื่อประโยชน์ร่วมกัน เช่น... (2) ทรัพย์สินสำหรับพลเมืองใช้ร่วมกัน เป็นต้นว่า ที่ชายตลิ่ง ทางน้ำ ทางหลวง ทะเลสาบ..." ดังนั้น น้ำในทางน้ำทั่วไปที่มิได้อยู่ในที่ดินของผู้ใดที่มีกรรมสิทธิ์จึงถือเป็นน้ำในที่สาธารณะ ซึ่งถือเป็นสาธารณสมบัติของแผ่นดิน ส่วนพระราชบัญญัติว่าด้วยการชลประทานหลวง พ.ศ. 2485 ได้ให้อำนาจหน่วยงานที่เกี่ยวข้องดำเนินการพัฒนาการชลประทานภายใต้เงื่อนไขว่า รัฐต้องชดใช้ค่าสินไหมทดแทนหากดำเนินการโอนที่ดินของผู้อื่นมาเป็นของรัฐ

นอกจากนี้ กฎหมายเฉพาะอื่นๆ ต่างมีแนวทางในการกำหนดสิทธิเหนือทรัพยากรน้ำในทิศทางเดียวกับประมวลแพ่งและพาณิชย์ กล่าวคือ น้ำเป็นทรัพย์สินของแผ่นดิน รัฐจึงมีอำนาจในการกำหนดมาตรการในการพัฒนาและจัดการหรือให้สิทธิดังกล่าวแก่ผู้อื่นได้ เช่น พระราชบัญญัติว่าด้วยการส่งเสริมการอนุรักษ์พลังงาน พ.ศ. 2535 ให้อำนาจคณะกรรมการนโยบายพลังงานแห่งชาติกำหนดมาตรการใดๆ ที่เกี่ยวข้องกับพลังงานแห่งชาติ ซึ่งรวมถึงทรัพยากรน้ำด้วย พระราชบัญญัติการประปานครหลวง พ.ศ. 2510 ได้อนุญาตให้เอกชนสามารถก่อสร้างและดำเนินการจัดการระบบชลประทานในบางพื้นที่ พระราชบัญญัติการชลประทานราษฎร์ พ.ศ. 2482 ให้อำนาจบุคคลหรือกลุ่มคนในการได้รับสิทธิในการพัฒนาทรัพยากรน้ำ ตามวิธีระบบชลประทานราษฎร์ ทั้งนี้ เป็นที่คาดว่าร่างพระราชบัญญัติว่าด้วยทรัพยากรน้ำจะกำหนดสิทธิเหนือทรัพยากรน้ำไว้ในทิศทางเดียวกันว่าทรัพยากรน้ำเป็นทรัพย์สินสาธารณะหรือเป็นทรัพย์สินของรัฐซึ่งรัฐมีอำนาจในการพัฒนาและจัดการเพื่อประโยชน์ของประชาชน

สำหรับการปกป้องซึ่งสิทธิเหนือทรัพยากรน้ำนั้น รัฐธรรมนูญ พ.ศ. 2540 มิได้กล่าวไว้ชัดเจน แต่มาตรา 52 รับรองสิทธิของบุคคลที่จะมีส่วนร่วมกับรัฐและชุมชนในการบำรุงรักษาและการได้ประโยชน์จากทรัพยากรธรรมชาติและความหลากหลายทางชีวภาพ และในการคุ้มครอง ส่งเสริม และรักษาคุณภาพสิ่งแวดล้อม เพื่อให้ดำรงชีวิตอยู่ได้อย่างปกติและต่อเนื่อง กล่าวคือ เมื่อทรัพยากรน้ำเป็นทรัพย์สินสาธารณะ รัฐอาจมีอำนาจในการพัฒนาและจัดการได้ อย่างไรก็ดี ประชาชนมีสิทธิอันชอบธรรมตามกฎหมายรัฐธรรมนูญในการมีส่วนร่วมในประโยชน์จากโครงการของรัฐ และมีสิทธิรับทราบข้อมูลในครอบครองของรัฐ และมีสิทธิเข้าร่วมในกระบวนการพิจารณาของเจ้าหน้าที่ของรัฐในการปฏิบัติราชการทางปกครองในอันที่อาจมีผลกระทบต่อสิทธิและเสรีภาพของตนตามกฎหมาย

อย่างไรก็ดี หากปรากฏว่ามีความเสียหายเกิดขึ้นจากการพัฒนาทรัพยากรน้ำ ไม่ว่าจะอยู่ในรูปของโครงการสร้างเขื่อนขนาดใหญ่หรือในรูปแบบอื่น คงมีเพียงพระราชบัญญัติส่งเสริมและควบคุมคุณภาพสิ่งแวดล้อมแห่งชาติ พ.ศ. 2535 ที่มีบทบัญญัติกำหนดให้มีการฟ้องร้องเพื่อให้มีการชดใช้ค่าสินไหมทดแทนสำหรับความเสียหายที่เกิดขึ้นจากการเปลี่ยนแปลงของสิ่งแวดล้อมที่เกิดขึ้นจากกิจกรรมหรือโครงการที่ริเริ่มหรือให้การสนับสนุนโดยรัฐ

ในกรณีที่ประชาชนได้รับความเสียหายจากโครงการของรัฐ ผู้เสียหายสามารถยื่นคำฟ้องได้ที่ศาลปกครอง ซึ่งพระราชบัญญัติว่าด้วยการจัดตั้งศาลปกครองและกระบวนวิธีพิจารณาทางปกครอง พ.ศ. 2542 กำหนดอำนาจศาลปกครองในการพิจารณาคดีพิพาทที่เกิดขึ้นระหว่างประชาชนผู้ที่ได้รับความเสียหายจากคำสั่งหรือการกระทำอื่นใดของหน่วยงานของรัฐหรือเจ้าหน้าที่ของรัฐ หรือจากสัญญาทางปกครอง

ในปัจจุบัน ยังไม่มีบทบัญญัติใดๆ ในกฎหมายไทยที่กำหนดถึงการแบ่งปันผลประโยชน์หรือการบรรเทาความเสียหายที่เกิดขึ้นจากเขื่อนหรือโครงการพัฒนาทรัพยากรน้ำ อย่างไรก็ตาม รัฐธรรมนูญรับรองสิทธิของบุคคลในการฟ้องร้องหน่วยงานราชการ รัฐวิสาหกิจ หรือราชการส่วนท้องถิ่น หรือองค์การของรัฐใดๆ ที่เป็นนิติบุคคลภายใต้กฎหมายไทย จากการกระทำหรือการละเว้นการกระทำจากเจ้าพนักงานหรือลูกจ้างของรัฐ เช่นเดียวกับที่บทบัญญัติในพระราชบัญญัติส่งเสริมและรักษาคุณภาพสิ่งแวดล้อมแห่งชาติ รับรองสิทธิของบุคคลที่ได้รับผลกระทบจากการเปลี่ยนแปลงของสิ่งแวดล้อมภายใต้กรอบของพระราชบัญญัตินี้ให้ได้รับการชดใช้ค่าสินไหมทดแทนสำหรับความเสียหายที่เกิดขึ้น ในการนี้ ข้อบทนี้สามารถนำมาปรับใช้ได้สำหรับกรณีฟ้องร้องเพื่อขอค่าสินไหมทดแทนต่อความเสียหายที่เกิดขึ้นจากการสร้างเขื่อน หรือการดำเนินการของเขื่อน และตามที่กล่าวไว้เบื้องต้นแล้วว่าพระราชบัญญัติการจัดตั้งศาลปกครองและกระบวนวิธีพิจารณาทางปกครองก็รับรองสิทธิของ

ประชาชนในการยื่นฟ้องคดีปกครองที่ศาลปกครองเพื่อขอรับค่าสินไหมทดแทนต่อความเสียหายที่เกิดขึ้นจากการกระทำของรัฐ หรือเจ้าหน้าที่ของรัฐ หรือบุคคลใดๆ ในส่วนที่เกี่ยวข้องกับสัญญาทางปกครอง ซึ่งน่าจะรวมถึงการฟ้องร้องเรียกค่าเสียหายสำหรับความเสียหายอันเกิดจากการสร้างเขื่อนด้วย

เป็นที่น่าสังเกตว่า ไม่มีบทบัญญัติใดๆ ไม่ว่าในกฎหมายรัฐธรรมนูญหรือกฎหมายอื่นใด ที่มีบทบัญญัติคุ้มครองสิทธิและการมีส่วนร่วมในการตัดสินใจของชนพื้นเมืองและกลุ่มชาวเขา

การประเมินผลกระทบสิ่งแวดล้อม

รัฐธรรมนูญระบุว่า โครงการหรือกิจกรรมที่อาจก่อให้เกิดผลกระทบอย่างรุนแรงต่อสิ่งแวดล้อมจะกระทำมิได้ เว้นแต่จะได้ศึกษาและประเมินผลกระทบต่อคุณภาพสิ่งแวดล้อม ข้อกำหนดเดียวกันนี้ปรากฏในพระราชบัญญัติส่งเสริมและรักษาคุณภาพสิ่งแวดล้อมแห่งชาติ และยังมีการออกประกาศกระทรวงที่เกี่ยวข้องจำนวนมากในช่วงปี พ.ศ. 2535 - 2543 ที่สำคัญประกาศกระทรวงวิทยาศาสตร์เทคโนโลยีและสิ่งแวดล้อมได้ระบุขนาดของโครงการพัฒนาน้ำที่ต้องทำการประเมินผลกระทบฯ ซึ่งเงื่อนไขเหล่านี้ถูกนำมาใช้สำหรับการวางแผน การก่อสร้าง และ/หรือ การดำเนินการของเขื่อนขนาดใหญ่อีกด้วย

ในภาคผนวกของประกาศกระทรวงวิทยาศาสตร์ฯ ปี พ.ศ. 2535 ได้ระบุให้รายงานการประเมินผลกระทบฯ จะต้องมีและดำเนินการวิเคราะห์ข้อมูลเกี่ยวกับ (ก) สภาพทางกายภาพของสิ่งแวดล้อม (ข) สภาพของทรัพยากรทางชีวภาพ (ค) มูลค่าในการใช้ประโยชน์ของมนุษย์ และ (ง) คุณภาพชีวิต

สำหรับกรณี (ค) และ (ง) นั้นการประเมินผลกระทบฯ จะต้องทำทั้งทางด้านสังคม สุขภาพและวัฒนธรรมด้วย และในระหว่างกระบวนการจัดเตรียมการประเมินผลกระทบฯ จะต้องมีการหารือร่วมกันระหว่างหน่วยงานที่เกี่ยวข้องและตัวแทนจากชุมชนท้องถิ่นและผู้เชี่ยวชาญอิสระ อย่างไรก็ตามการประเมินผลกระทบสิ่งแวดล้อมดังกล่าวไม่รวมถึงการตรวจสอบและการประเมินผลภายหลังเสร็จสิ้นการก่อสร้างโครงการ และเมื่อเป็นดังนี้ มาตรการบรรเทาความเสียหายที่เกิดขึ้นเมื่อโครงการเริ่มดำเนินการแล้ว หรือความเสียหายที่ตรวจพบจากการตรวจสอบในภายหลังจึงไม่มีระบุไว้

การเข้าถึงข้อมูลและการมีส่วนร่วมในการตัดสินใจของประชาชน

ในปัจจุบัน แม้จะไม่มีบทบัญญัติเฉพาะ ที่กำหนดและเปิดโอกาสให้ประชาชนสามารถเข้าถึงข้อมูลเกี่ยวกับการจัดการทรัพยากรน้ำ ตลอดจนการวางแผน การก่อสร้างและการดำเนินการของเขื่อนได้

แต่บทบัญญัติของรัฐธรรมนูญได้กำหนดหลักทั่วไปไว้ว่า บุคคลมีสิทธิในการเข้าถึงข้อมูลข่าวสารที่อยู่ในความครอบครองของหน่วยงานราชการ รัฐวิสาหกิจ และราชการส่วนท้องถิ่น อย่างไรก็ตาม หากการเปิดเผยข้อมูลกระทบต่อความมั่นคง ความปลอดภัยของสาธารณะ หรือสิทธิของบุคคลอื่น ก็ไม่อาจเปิดเผยได้ และรัฐธรรมนูญยังระบุเพิ่มเติมอีกด้วยว่า บุคคลมีสิทธิมีส่วนร่วมในกระบวนการพิจารณาของเจ้าหน้าที่ในการปฏิบัติราชการทางปกครองอันมีผลหรืออาจมีผลกระทบต่อสิทธิและเสรีภาพของตน ทั้งนี้ตามที่กฎหมายบัญญัติ ดังนั้น อาจกล่าวได้ว่า ข้อบทของกฎหมายรัฐธรรมนูญนี้เป็นบทบัญญัติทั่วไปที่สามารถปรับใช้กับการเข้าถึงข้อมูลที่เกี่ยวข้องกับการพัฒนาทรัพยากรน้ำหรือการสร้างเขื่อนได้ นอกจากนี้ พระราชกฤษฎีกาว่าด้วยหลักเกณฑ์และวิธีการบริหารกิจการบ้านเมืองที่ดี พ.ศ. 2546 มาตรา 8 ระบุให้มีการรับฟังความคิดเห็นจากประชาชนก่อนการดำเนินการบริหารราชการใดที่อาจมีผลกระทบต่อประชาชน โดยมีการศึกษาข้อดีข้อเสีย และชี้แจงทำความเข้าใจให้กับประชาชนทราบถึงผลประโยชน์ที่จะได้รับ ซึ่งรวมถึงการเปิดเผยข้อมูลของรัฐให้กับประชาชนได้รับรู้ด้วย

พระราชบัญญัติส่งเสริมและรักษาคุณภาพสิ่งแวดล้อมแห่งชาติยืนยันหลักการดังกล่าวโดยกำหนดให้บุคคลมีสิทธิได้รับข้อมูลหรือข่าวสารจากรัฐบาลเกี่ยวกับการส่งเสริมและการรักษาคุณภาพสิ่งแวดล้อมแห่งชาติและระบุว่าหน่วยงานของรัฐมีหน้าที่ต้องจัดพิมพ์ข้อมูลที่เป็นทางการลงประกาศในราชกิจจานุเบกษาด้วย

กระบวนการในการตัดสินใจเกี่ยวกับการสร้างเขื่อนหรือสิ่งก่อสร้างทางน้ำอื่นๆ ควรต้องโปร่งใส ถึงแม้ว่ากฎหมายและกฎระเบียบที่มีอยู่ในปัจจุบันจะไม่มีบทบัญญัติเฉพาะแต่หลักกฎหมายเท่าที่มีอยู่ เช่น ที่ปรากฏในพระราชกฤษฎีกาว่าด้วยหลักเกณฑ์และวิธีการบริหารกิจการบ้านเมืองที่ดี พ.ศ. 2546 หรือในพระราชบัญญัติว่าด้วยข้อมูลข่าวสารของราชการ พ.ศ. 2540 ที่กำหนดให้หน่วยงานของรัฐตีพิมพ์ข้อมูลของราชการในราชกิจจานุเบกษา น่าจะสามารถนำมาปรับใช้เพื่อช่วยให้เกิดความโปร่งใสในการตัดสินใจของรัฐที่เกี่ยวข้องกับการพัฒนาทรัพยากรน้ำหรือการสร้างเขื่อน

การบริหารจัดการโครงสร้างของโครงการพัฒนาทรัพยากรน้ำ

แม้ว่าไม่มีบทบัญญัติใดในกฎหมายไทยที่วางแนวทางหรือหลักเกณฑ์ทั่วไปในการบริหารจัดการโครงสร้างของโครงการพัฒนาทรัพยากรน้ำโดยเฉพาะการสร้างเขื่อน อย่างไรก็ตาม บทบัญญัติบางมาตราในพระราชบัญญัติการชลประทานหลวง พ.ศ. 2485 ที่สามารถปรับใช้ได้

สำหรับการการปรับปรุงการดำเนินการและความปลอดภัยของเขื่อนนั้น คงมีเพียงพระราชบัญญัติการชลประทานหลวงที่กำหนดให้กรมชลประทานมีหน้าที่ในการบำรุงรักษาและดูแลความปลอดภัยของเขื่อน

การดำเนินการตาม

กฎหมายไทยไม่มีบทบัญญัติพิเศษที่กำหนดให้มีการตรวจสอบการดำเนินการตามพันธะตามกฎหมาย อย่างไรก็ดี ข้อบทที่อาจบังคับใช้ทางอ้อมได้ คือ พระราชบัญญัติการจัดตั้งศาลปกครองและกระบวนวิธีพิจารณาทางปกครอง พ.ศ. 2542 ซึ่งรับรองสิทธิในการยื่นคำฟ้องเพื่อการชดใช้และบรรเทาความเสียหายอันเกิดจากการกระทำและละเว้นการกระทำของหน่วยงานราชการหรือเจ้าหน้าที่ของรัฐ หรือเมื่อมีข้อพิพาทที่เกี่ยวข้องกับสัญญาทางปกครอง โดยศาลปกครองอาจมีคำสั่งให้ ยุติ ระงับ หรือ ยกเลิก โครงการหนึ่งได้ หากพบว่าหน่วยงานของรัฐใช้อำนาจโดยมิชอบด้วยกฎหมายในการออกกฎ คำสั่งอื่นใดนอกเหนือไปจากอำนาจ หรือกระทำไม่ถูกต้องตามรูปแบบขั้นตอนหรือวิธีการอันเป็นสาระสำคัญที่กำหนดไว้ ซึ่งบทบัญญัตินี้อาจปรับใช้เพื่อให้โครงการสร้างเขื่อนหรือการดำเนินการของเขื่อน เป็นไปโดยปรกติเรียบร้อย มิฉะนั้นหน่วยงานของรัฐที่เกี่ยวข้องจะต้องถูกดำเนินการฟ้องร้องจากการที่ไม่ได้ปฏิบัติตามพันธะตามกฎหมาย

การอนุรักษ์ระบบนิเวศทางน้ำและทรัพยากรทางชีวภาพ

แม้ว่าจะไม่มีบทบัญญัติเฉพาะ ที่คุ้มครองทางน้ำหรือแม่น้ำที่ไหลผ่านพื้นที่คุ้มครอง บทบัญญัติบางมาตราของพระราชบัญญัติป่าสงวนแห่งชาติ (ฉบับแก้ไขเพิ่มเติม พ.ศ. 2522) สามารถนำมาปรับใช้ได้ เนื่องจาก พระราชบัญญัติฉบับนี้กำหนดนิยามความหมายของคำว่า **"**ป่าสงวน**"** ว่า หมายความรวมถึง ภูเขา ห้วย หนอง คลอง บึง บาง ลำน้ำ ทะเลสาบ เกาะ และที่ชายทะเลที่ยังมิได้มีบุคคลได้มาตามกฎหมาย และพระราชบัญญัติฉบับนี้ยังได้ระบุอีกว่าการเปลี่ยนแปลงเขตหรือการเพิกถอนป่าสงวนแห่งชาติป่าใด ไม่ว่าทั้งหมดหรือบางส่วน ให้กระทำได้โดยออกกฎกระทรวง อย่างไรก็ตามก็อนุญาตให้รัฐสามารถใช้สอยป่าสงวนทั้งหมดหรือบางส่วนเพื่อประโยชน์ของรัฐได้ ทั้งนี้โดยประกาศของรัฐมนตรีว่าการกระทรวงฯ อย่างไรก็ดี พระราชบัญญัตินี้ยังมิได้กำหนดหลักเกณฑ์เฉพาะสำหรับลักษณะของแม่น้ำที่จะได้รับการคุ้มครอง และยังไม่มีการกำหนดมาตรการใดๆ ในการป้องกัน ลดและ/หรือ บรรเทาผลกระทบทางลบอันเกิดจากเขื่อนหรือแม่น้ำที่ไหลผ่านพื้นที่ป่าสงวน

พระราชบัญญัติสงวนและคุ้มครองสัตว์ป่า พ.ศ. 2535 กำหนดให้มีการคุ้มครองพันธุ์สัตว์ที่กำลังจะสูญพันธุ์ อย่างไรก็ตาม ปัจจุบันก็ยังไม่มีมาตรการใดๆ ที่กำหนดให้มีการป้องกัน ลด และ/หรือ บรรเทาผลกระทบทางลบอันเกิดจากเขื่อนต่อชนิดพันธุ์สัตว์เหล่านั้น

แม่น้ำที่ใช้ร่วมกัน

ประเทศไทยเป็นภาคีอนุสัญญาว่าด้วยการพัฒนาที่ยั่งยืนของแม่น้ำโขง พ.ศ. 2538 แต่ประเทศไทยยังไม่

เคยออกกฎหมายหรือกฎระเบียบเฉพาะฉบับใดเพื่ออนุวัติอนุสัญญาว่าด้วยการพัฒนาที่ยั่งยืนของแม่น้ำโขง และในฐานะที่เป็นประเทศที่เป็นท้ายน้ำของแม่น้ำโขง ประเทศไทยเปราะบางต่อปัญหาน้ำแล้งและโครงการเขื่อนที่สร้างกั้นลำน้ำสายประธานของแม่น้ำโขง โดยเฉพาะโครงการสร้างเขื่อนในประเทศจีน

เป็นที่คาดหวังว่า ร่างพระราชบัญญัติว่าด้วยทรัพยากรน้ำฉบับที่กำลังยกร่างอยู่นี้จะกำหนดให้มีการจัดตั้งคณะกรรมการทรัพยากรน้ำแห่งชาติ ตลอดจนคณะกรรมการลุ่มน้ำขึ้นมา โดยอำนาจหน้าที่ของคณะกรรมการเหล่านี้จะเกี่ยวพันกับ (ก) การจัดการน้ำ (ข) การกำหนดสิทธิในการใช้น้ำ (ค) การระงับข้อพิพาทระหว่างลุ่มน้ำ และ (ง) การกระตุ้นให้เกิดการมีส่วนร่วมของประชาชนและการทำประชาพิจารณ์ทั้งในระดับชาติและในระดับต่ำกว่า และเป็นที่คาดหวังอีกด้วยเช่นกันว่า ร่างพระราชบัญญัติว่าด้วยทรัพยากรน้ำจะกำหนดให้คณะกรรมการทรัพยากรน้ำแห่งชาติต้องนำข้อเสนอแนะและความเห็นต่างๆ จากสาธารณชนมาร่วมพิจารณาในการยกร่างนโยบายน้ำระดับชาติ

ข้อเสนอแนะ

นโยบายและยุทธศาสตร์ระดับชาติฉบับสมบูรณ์ที่เกี่ยวข้องกับการพัฒนาทรัพยากรน้ำจะต้องมีข้อบทที่ทำให้แน่ใจได้ว่า สาธารณชนสามารถเข้าถึงข้อมูล และประชาชนต้องมีส่วนร่วมในการตัดสินใจ ผลการพิจารณาและประเมินผลกระทบต่อคุณภาพสิ่งแวดล้อมจะต้องเข้ามาอยู่ในกรอบนโยบายด้านทรัพยากรน้ำของชาติด้วย แม้ว่าการศึกษาฉบับนี้สรุปได้ว่า กรอบนโยบายและกฎหมายไทยที่มีอยู่มิได้ขัดแย้งหรือมีประเด็นที่แตกต่างไปจากยุทธศาสตร์หลัก 7 ประการของ WCD แต่หากต้องการสนับสนุนการนำยุทธศาสตร์ทั้ง 7 ประการของ WCD มาปรับใช้ บทสรุปเชิงนโยบายฉบับนี้มีข้อเสนอแนะดังนี้

นโยบายพัฒนาเศรษฐกิจและสังคมแห่งชาติ

แผนพัฒนาเศรษฐกิจและสังคมแห่งชาติเป็นนโยบายด้านการพัฒนาที่สำคัญที่สุดของประเทศไทย ในแผนพัฒนาฯ ฉบับที่ 9 มิได้ให้ความสำคัญอย่างเพียงพอกับประเด็นเรื่องการเสื่อมคุณภาพของสิ่งแวดล้อมภายในประเทศ นอกจากนี้ นโยบายและแผนวิสัยทัศน์ฯ เป็นแผนระยะยาวด้านการจัดการสิ่งแวดล้อมของไทยซึ่งควรได้รับการทบทวนเป็นระยะๆ เพื่อให้แนวทางปฏิบัติที่เกิดจากการแปลงแผนฯ ดังกล่าวสอดคล้องและสอดรับกับสภาพเศรษฐกิจ สังคม และวัฒนธรรมที่เปลี่ยนแปลงไป

การศึกษาทบทวนโครงสร้างด้านนโยบายและกฎหมายที่มีอยู่ที่เกี่ยวข้องกับการจัดการทรัพยากรน้ำของไทยค้นพบด้วยว่า มีความเหลื่อมล้ำของเวลาในการจัดทำแผนพัฒนาเศรษฐกิจและสังคมแห่งชาติกับนโยบายและแผนวิสัยทัศน์ฯ ของกระทรวงทรัพยากรธรรมชาติและสิ่งแวดล้อม

โดยสภาพัฒนาเศรษฐกิจและสังคมแห่งชาติจะจัดทำแผนพัฒนาเศรษฐกิจฯ ทุกๆ 5 ปี ในขณะที่นโยบายและแผนวิสัยทัศน์จะมีผลบังคับใช้ถึงปี 2559 ดังนั้น จึงอาจกล่าวได้ว่า หากหน่วยงานที่เกี่ยวข้องกับนโยบายทั้งสองสามารถกำหนดให้การจัดทำหรือทบทวนนโยบายดังกล่าวอยู่ในช่วงเวลาเดียวกันได้ ก็น่าจะทำให้ทิศทางและแนวนโยบายหลักของประเทศที่เกี่ยวข้องกับการพัฒนาเศรษฐกิจและการจัดการทรัพยากรถูกกำหนดขึ้นจากภาพรวมที่ได้วิเคราะห์ปัจจัยต่างๆ อย่างบูรณาการ และทำให้นโยบายทั้งสองมีความสอดคล้องและสอดรับกับความต้องการในการพัฒนาเศรษฐกิจ สังคมและสิ่งแวดล้อมของประเทศ ซึ่งจะส่งผลระยะยาวต่อโครงสร้างทางเศรษฐกิจของไทยที่ยังอาศัยประโยชน์จากทรัพยากรธรรมชาติเป็นปัจจัยหลักในการขับเคลื่อนความเจริญเติบโตทางเศรษฐกิจของประเทศ

ถึงแม้ว่าการพัฒนาทรัพยากรน้ำจะยังคงเป็นกุญแจสำคัญสำหรับการพัฒนาเศรษฐกิจและสังคมแห่งชาติ แต่ในปัจจุบันนี้ รัฐบาลยังไม่มีนโยบายเกี่ยวกับการพัฒนาน้ำที่ชัดเจน ดังนั้น เป็นที่คาดหวังว่า ร่างพระราชบัญญัติว่าด้วยทรัพยากรน้ำจะกำหนดให้หน่วยงานที่เกี่ยวข้องมีแนวทางและทิศทางในการพัฒนาทรัพยากรน้ำอย่างไร โดยเฉพาะอย่างยิ่งในส่วนที่เกี่ยวกับการก่อสร้างเขื่อนขนาดใหญ่และสาธารณูปโภคอื่นๆ ทั้งนี้ โดยนำข้อคิดเห็นของประชาชนเข้าร่วมพิจารณาในการยกร่างนโยบายดังกล่าวด้วย

นโยบายรัฐบาลควรกำหนดให้มีการพัฒนาและคุ้มครองผลประโยชน์ของสาธาณชนที่เกิดขึ้นจากการใช้ทรัพยากรน้ำ โดยเฉพาะอย่างยิ่ง บทบาทของรัฐบาลในการแก้ไขปัญหาข้อพิพาทในประเด็นเรื่องทรัพยากรน้ำจะต้องกำหนดขึ้นอย่างชัดเจน นอกจากนี้ การกำหนดตัวชี้วัดความสำเร็จของงานก็เป็นอีกปัจจัยหนึ่งที่จะช่วยให้การตรวจสอบผลงาน มีความชัดเจนมากยิ่งขึ้น

การเปลี่ยนแปลงทางกฎหมาย

ในปัจจุบัน ยังไม่มีกฎหมายภายในของไทยที่ขัดแย้งกับยุทธศาสตร์หลัก 7 ประการของ WCD อย่างไรก็ตาม สิทธิของกลุ่มคนที่ด้อยโอกาส (เช่น กลุ่มชนพื้นเมือง, สตรีและชนกลุ่มน้อย) ควรได้รับการกล่าวไว้ เนื่องจากกลุ่มคนเหล่านี้เป็นกลุ่มคนด้อยโอกาสและมีความเปราะบางต่อการเปลี่ยนแปลงของสิ่งแวดล้อมรอบๆ ตัว สิทธิของคนกลุ่มนี้จึงควรระบุไว้เป็นพิเศษ ผลการดำเนินงานในอดีตและในปัจจุบันของเขื่อนจะต้องได้รับการประเมินเช่นกัน

นอกจากนี้ การมีส่วนร่วมของประชาชนในการการตัดสินใจของรัฐควรได้รับการส่งเสริมในทางปฏิบัติมากขึ้น กฎหมายควรกำหนดไว้ด้วยว่า จะต้องมีการใช้ประโยชน์จากผลการศึกษาการประเมินผลกระทบฯ อย่างมีประสิทธิภาพและเปิดกว้าง ในกระบวนการตัดสินใจของรัฐ

ในส่วนที่เกี่ยวข้องกับศาลปกครอง การศึกษาฯ ฉบับนี้เห็นว่า ควรยกเว้นค่าธรรมเนียมศาลในการพิจารณาคดีที่ยื่นต่อศาลปกครอง

Viet Nam Water Resources Development

A review of the existing policy and legislation framework

Duong Thanh An and Phan Thi Minh Loan[1]

In Viet Nam, socio-economic development is guided by long-term plans and/or strategies, which are legalised and detailed in resolutions by the National Assembly. At present, the development of the country is following the direction set by the National Assembly's Plan for Socio-Economic Development 2001-2005. These plans clearly indicate the objectives, principles and activities for the development of the country in that period, of which the "development of rapid, effectively and sustainable economic growth is closely linked with social improvement, equality and environmental protection". Hydropower plants and irrigation works are given priority for development. However, no specific water resources infrastructure element is included. In order to successfully implement these plans/strategies as well as follow the commitment made at the 2002 World Summit on Sustainable Development, the Government issued "The Strategic Orientation for Sustainable Development of Viet Nam" (Agenda 21) in 2004, which highlights the sustainable use and protection of water resources as a priority area in natural resources utilisation and environmental protection.

At present, Viet Nam has no long-term strategies for water resources management at the national and regional levels. This is seen as one of the shortcomings in water resources management. The Ministry of Natural Resources and Environment (MoNRE) recently began formulating a draft national strategy on water resources up to 2020. This draft strategy was completed by the end of 2005. However, at the national level, water responsibilities are split between MoNRE and the Ministry of Agriculture and Rural Development (MARD). Other actors, such as the energy sector, are also very much involved in shaping water policy.

The existing policy and legislative framework of Viet Nam is generally consistent with and in accord with many of the WCD Strategic Priorities. The obligation to ensure reasonable exploration and environmental protection by all individuals and organisations is in the Viet

---

[1] Duong Thanh An, Deputy Head, Division of Laws, Planning and General Affairs, Viet Nam Environment Protection Agency, 67 Nguyen Du St., Ha Noi, Viet Nam, Email: dtan@nea.gov.vn; Phan Thi Minh Loan, Procurement Department, Electricity of Vietnam, 18 Tran Nguyen Han, Ha Noi, Viet Nam, Email: loanpm@evn.com.vn

Nam Constitution. Much of the substance of the WCD Strategic Priorities is reflected in the legislation of Viet Nam concerning water resources, energy, environmental protection and sustainable development.

Hydropower development is a key priority for the Government of Viet Nam. The Master Plan for the Development of the Power Sector of Viet Nam up to 2010 and 2020 considers hydropower to be one of the most effective energy resources and states that it should be fully exploited. Obviously, the construction and operation of hydropower plants requires regulations. In Viet Nam these are not specifically written for hydropower, but are for construction works in general. Therefore, builders of hydropower plants are bound by the same regulations as, for example, the builders of a cement plant. More specific regulations are required if the Viet Nam framework is to be comparable to the WCD framework in the areas of sustaining rivers and livelihoods.

Recognition and safeguarding of rights and entitlements

In Viet Nam, human rights (including civil and political, economic, social and cultural rights) are regulated by the Constitution, 1992 and under the Water Resources Law, 1998 and the Land Law, 2003. Water and land resources are under the ownership of all Vietnamese people and are entrusted by the State to the people to use in a stable manner over the long term. When land is requisitioned by the State, affected persons should be compensated and assisted in resettlement. Current legislation provides for various types and levels of compensation as well as payment procedures.

The Water Resources Law stipulates that organisations and individuals are entitled to utilise water resources for living and production purposes. Although the law does not contain a specific provision on property rights, indirect provision is made through the stipulation that such organisations and individuals are entitled to benefit by assigning, leasing and mortgaging their properties for investment in the utilisation and development of water resources. Such entities are also entitled to compensation for damage in the event that their permits to utilise water resources are withdrawn before expiry of the specified term for reasons of national defence and security or other national and public interests. In addition, they can lodge complaints and seek legal action through State agencies and the courts for any violation of the right to utilise water resources or violation of other legitimate interests.Compensation for persons affected by the construction/operation of dams when land is recovered by the State is governed by:

Decree 181/2004/ND-CP on Land Law implementation (further guidance about this decree is provided by Ministry of Finance Circular 116/2004/TT-BTC 7); and Decree 197/2004/ND-CP on compensation, support and resettlement when land is taken back by the State; and Decree 17/2006/ND-CP dated 27/01/2006 on revision of previously issued Decrees on Land Law implementation and Decree 187/2004/ND-CP on equitization of State-owned enterprises.

There are categories of compensation specified for land, property, financial support, and resettlement. The level of compensation is to be specified in project plans which must be approved by Government authorities.

There is no specific provision for handling reparation claims for losses from existing dams. In general, the law on the resolution of claims and disclosures is applied to handling such reparation claims. Related provisions under the Law on Environmental Protection and the Water Resources Law can also be applied to such claims. However, claims for losses caused by water resources development may be handled by the competent authorities in accordance with economic, civil or administrative procedures. If the construction and/or operation of a dam lead to adverse impacts on the environment, the provisions of the Law on Environmental Protection can be applied with regard to compensation. References to compensation in general can also be found in the Civil Code, 2005.

Environmental impact assessment

Under the revised Law on Environmental Protection 2005 (which will officially take effect from 01 July 2006), Strategic Environmental Assessment (SEA) has been for the first time formally legalized in the Vietnam's legislation system. Subject to this SEA are strategies and plans (referred to as "projects"). The SEA report is to be prepared at the time of project formulation. The SEA appraisal result will be one of the criteria for project approval. Under the revised Law on Environmental Protection 2005 Environmental Impact Assessment (EIA) is still obligatory for all new projects listed as EIA-required in this law and guidelines on its implementation, and should include assessments of social, health and cultural issues. The approval of the EIA report is a prerequisite for a project to get investment and operational licenses. The 2005 law also stipulates the supervision and inspection of compliance with environmental protection requirements set out in the EIA report as approved.

In the Law on Environmental Protection 2005, the participation of relevant public societies, organizations and individuals in SEA and EIA processes is further strengthened, as follows:

- During the EIA preparation process, comments and feedback from commune-level People's Committees (PCs) and representatives of local communities within the project area as well as opposition to project implementation or environmental protection measures must be incorporated as key contents of the EIA report;
- During the EIA appraisal process, local organizations, communities and individuals are entitled and encouraged to provide comments, feedback and requests on environmental protection issues to the project appraisal and approval authorities. The project appraisal and approval authorities are then responsible for taking into account all these comments, feedback and requests before any conclusion/decision is made;
- The approval of the EIA report must be reported to the local PC where the project will be implemented. Information on waste types, treatment technologies, environmental standards and environmental protection measures must be made public and posted at the project site for the purpose of public access, inspection and supervision.

Before the Law on Environmental Protection 2005 takes effect, other legislation containing specific references to EIAs that is currently in effect includes:

- Resolution 05/1997/QH10 about standards for important national projects;
- Government Decree 175/CP about implementation of the Law on Environmental Protection;
- Government Decree 143/2004/ND-CP amending Government Decree 175/CP; and
- Ministry of Science, Technology and Environment Circular 490/1998/TT-BKHCNMT which provides guidance on the preparation and evaluation of EIA reports.

Government Decree 175/CP stipulates that following the assessment of EIA reports, projects that started operating before 10 January 1994 are categorised as either: (a) qualified for continued operations, without environmental treatment; (b) need to build waste treatment works; (c) need to change technology and/or geographical location; or (d) should have their operating license terminated.

All organisations and units are required to use Vietnamese environmental standards in the preparation of EIA reports. However, in areas where Vietnamese standards have yet to be established, standards of other countries may be applied with official permission of the authorised agencies.

Public access to information and public participation in decision-making

The Constitution states that keeping the public informed is a human right. The principle of "known, discussed, done and examined by people" is a crucial part of the development process in Viet Nam. Public participation, including water resources development and dam management, is regulated by laws with the focus on the planning process. Public participation is also enabled in the EIA appraisal process as specified in the Law on Environmental Protection and Government Decree 175/CP on Implementation of the Law, and the participation of communities in the EIA process is being accelerated.

Public access to information and participation in the decision-making process is, in general, reflected in the other legislation and policies mentioned above, specifically the Regulation on Democracy at Grassroots Level, Government Decree 79/2003/ND-CP, dated 7/7/2003.

With regard to public participation in the preparation and approval of construction planning, the Construction Law, 2003, details the collection of public opinion on master plans. However, there is no specific provision for public participation in decision-making related to dams or other types of water resources development. While determining ways in which the public can participate in sustainable development, Viet Nam's Agenda 21 gives pre-eminence to the role of the public in social and community management. The Agenda stipulates that in the case of the largest projects with the greatest impact on the population, community participation in environmental impact assessment should be enhanced by institutionalising the participatory role of the public as well as the introduction of compliance measures. It sets out the required priority activities for accelerating participation in sustainable development by each social group, with women and ethnic minorities being given special attention.

Infrastructure management

Current legislation specifically stipulates the principles of management and improvement of existing water infrastructure, particularly with regard to the importance of the role of each dam. Implementation procedures for new projects in general and dam projects in particular are governed by legislation. The management of existing dams follows the stipulations in the Ordinance on Exploration and Protection of Irrigation Works (32/2001/PL-UBTVQH10). Implementation of the Ordinance is guided by Government Decree 143/2003/ND-CP.
The requirements for monitoring and evaluating are provided for as a principle of existing regulations. The Ordinance on Exploration and Protection of Irrigation Works stipulates that organisations exploiting irrigation works should monitor, detect and promptly deal with incidents, maintain such works and ensure their safety, and inspect and repair such works before and after the monsoon and flood season.

Licensing the operation of a dam is provided for in the Water Resources Law and Government Decree 179/2001/ND-CP on Implementation of the Water Resources Law.

Compliance

Regulations on compliance are in effect. The mechanism for payment of compensation and settlement, supervision and inspection, rewards and penalties is found in the Water Resources Law, the Construction Law, the Land Law, the Law on Environmental Protection and related regulations. The Water Resources Law stipulates that the protection and utilisation of water resources must comply with the zoning of river basins already ratified by the competent State agency. In addition, conforming to the plans, procedures, and regulations approved by the competent authorities is one of the responsibilities of individuals and organisations exploring irrigation works that are provided for in the Ordinance on Exploration and Protection of Irrigation Works.

Construction works in general and the construction of dams in particular are required to follow the principles laid down in the Construction Law, one of which is that construction of works should be in accordance with master plans and the works design as well as in conformity with natural conditions and the particular cultural and social conditions of each locality. Construction works not in conformity with the master plan are prohibited. Construction work must also be carried out in combination with socio-economic development, and national defense and security. However, there is no specific regulation on compliance with the benefit-sharing mechanism.

According to environmental protection regulations, a project such as dam construction must conduct an EIA that includes an assessment of the environmental and social factors. Pre-feasibility study reports and feasibility study reports are also required in order to analyse and evaluate economic, social and environmental benefits, and enable the sharing of the benefits and costs.

There is no legislation on the need for a compliance plan. However, the compensation and resettlement procedure is stipulated in Government Decree 197/2004/ND-CP, and Circular 116/2004/TT-BTC. Violations of regulations on land recovery are covered by Government Decree 181/2004/ND-CP, which specifies actions that are considered as land recovery violations as well as the penalties for such violations. Penalties comprise disciplinary action such as a warning, salary reduction, demotion, being relieved of authority, or dismissal. Penalties for non-compliance are also specified in several other legal documents, including: (a) the 1999 Penal Code; (b) the Civil Code; (c) Government Decree 121/2004/ND-CP on

Providing Penalties for Administrative Violations in the Area of Environmental Protection; and (d) other laws that provide penalties for administrative violations in certain other areas such as forestry and fisheries. The costs of compensation and resettlement must be built into the project budget (Government Decree 197/2004/ND-CP).

The Water Resources Law, the Law on Environmental Protection, the Land Law and the Construction Law also cover inspections for compliance and implementation of these laws. According to these laws, the competent authorities for such inspections are: (a) the Ministry of Agriculture and Rural Development (water resources development and irrigation works); (b) the Ministry of Construction (construction works); and (c) the Ministry of Natural Resources and Environment (land and environmental protection).

There are no specific provisions on incentives and/or penalties for non-compliance with dam agreements/contracts. These aspects must be included in agreements between participating parties; alternatively, the general provisions related to agreements/contracts may be applied. In addition, the regulations on incentives and penalties in general can be employed. Under the Construction Law, corruption in construction work is prohibited. In addition, the Water Resources Law and the Ordinance on Exploration and Protection of Irrigation Works stipulate that any person who illegally uses water charges and fees will, depending upon the nature and level of the violation, be disciplined or considered for penal liability. If any damage is caused by corruption, the person(s) concerned will have to pay compensation as prescribed by the Water Resources Law and the Ordinance on Exploration and Protection of Irrigation Works. In addition, regulations to discourage and prevent corruption in general can be applied.

Conservation of aquatic ecosystems and biological resources

Regulations on the management of special uses, safeguarding measures, and production of natural forests are provided in the Decision 08/2001/QD-TTg of the Prime Minister on the Regulations on Classification and Management of National Gardens, Natural Preserves and Cultural, Historical and Environmental Areas (Areas for Protection of Landscapes and Safeguarding Forests). Rivers and streams related to such forests are considered to be part of those forests and therefore subject to the same management and protection as those forests. Government Decree 109/2003/ND-CP on the Conservation and Sustainable Development of Wetlands provides regulations on the protection of mangrove preserves.

Legally-binding measures for preventing, minimising, and/or mitigating negative impacts of dams on rivers flowing through protected areas are directly introduced through EIAs.

The government of Viet Nam is also now very interested in the concept and practice of 'environmental flows'. The concept is to ensure that an adequate flow regime is provided within a river, wetland or coastal zone to maintain ecosystems and their benefits where there are competing water uses. Threatened and/or endangered species are protected by means of various documents including the Law on Forest Protection and Development 2004, the Law on Environmental Protection 2005, the Law on Fisheries, 2003, the Ordinance on Protection and Quarantine of Plants, 2001, and Government Decree 175//1994/ND-CP on the Implementation of the Law on Environmental Protection. In particular, the Penal Code provides a maximum penalty of seven years of imprisonment and other supplemental penalties for the violation of regulations related to the protection of rare and wild species of animals.

Shared rivers

With regard to cooperation in water resources sharing, provisions are provided indirectly in the Water Resources Law with respect to the transfer of water from one river basin or sub-basin to another. In Agenda 21, enhancement of international cooperation in water resources management, particularly cooperation with neighboring countries having common rivers, is given priority for ensuring the sustainable development of water resources. Cooperation in the sustainable development of the Mekong River basin is given special attention.

References are made in other legal documents to policies on cooperation in managing shared water resources. The Water Resources Law provides principles for international relations related to water resources. The State encourages the broadening of international relations and cooperation in basic surveys, protection, exploitation and use of water resources, and in preventing and overcoming harm caused by water with a view to developing water resources. This is in accordance with the principle of safeguarding sovereignty, territorial integrity, and mutual benefit, and in conformity with the international conventions that Viet Nam has signed or to which it has acceded.

Recommendations

The long-term strategy for water resources development at the national and regional levels should be improved. To ensure sustainable development of water resources, alternative perspectives should be taken into account in the formulation of the national water strategy. The regulations on public participation in decision-making should be improved for the whole process of project implementation, not only the planning stage. Improvement should also include the methodology for project implementation. In particular, due to the serious impact

of dam projects on local communities, public participation in dam projects requires separate regulations. Legislation should not only recognise the right of public participation; it should also specify the measures for allowing participation, such as the provision of information, legal, professional and financial support, and sufficient time for consideration and consultation.

The compliance mechanisms should be improved. Additional compliance-promoting regulations are required. Incentives, rewards and penalties should all be part of the mixture of compliance instruments.

Improvement of existing regulations should be undertaken in association with improvement in water resources and environmental protection management capacity. Information dissemination and education with regard to legal provisions on water resources, environmental protection and sustainable development need to be enhanced.

International cooperation in water resources management and environmental protection is already covered in the existing Viet Nam framework. As with other areas, to be more effective, implementation needs to be promoted.

Phát triển Tài nguyên nước ở Việt Nam

Tổng quan về khung chính sách và pháp luật hiện tại

Dương Thanh An và Phan Thị Minh Loan[1]

Ở Việt Nam, các chiến lược và/hoặc kế hoạch phát triển kinh tế xã hội dài hạn của quốc gia được xây dựng và thông qua bởi Quốc hội. Hiện nay, sự phát triển của đất nước đang theo định hướng đã được đặt ra trong Kế hoạch Phát triển Kinh tế Xã hội của Quốc hội giai đoạn 2001-2005. Những kế hoạch này chỉ ra một cách rõ ràng các mục tiêu, nguyên tắc và hoạt động vì sự phát triển của đất nước trong giai đoạn này, trong đó "sự tăng trưởng kinh tế nhanh, hiệu quả và bền vững được liên kết chặt chẽ với việc cải thiện xã hội, công bằng và bảo vệ môi trường" theo đó ưu tiên xây dựng và phát triển các nhà máy thuỷ điện và công trình thuỷ lợi. Tuy nhiên, không có một phần riêng về cơ sở hạ tầng tài nguyên nước trong văn bản này. Để thực hiện thành công những kế hoạch/ chiến lược này cũng như để tuân thủ cam kết năm 2002 tại Hội nghị Thượng đỉnh Thế giới về Phát triển Bền vững, Chính phủ đã ban hành "Định hướng Chiến lược về Phát triển Bền vững của Việt Nam" (Chương trình nghị sự 21) vào năm 2004 trong đó nêu bật việc sử dụng bền vững và bảo vệ tài nguyên nước là một mảng ưu tiên trong sử dụng các nguồn tài nguyên thiên nhiên và bảo vệ môi trường.

Hiện nay, Việt Nam chưa có các chiến lược dài hạn cho việc quản lý tài nguyên nước ở cấp quốc gia và cấp vùng. Đây được xem là một trong những bất cập trong lĩnh vực quản lý tài nguyên nước. Bộ Tài Nguyên và Môi Trường (MoNRE) gần đây đã bắt đầu xây dựng dự thảo chiến lược quốc gia về tài nguyên nước đến năm 2020. Dự thảo chiến lược này đã được hoàn thiện vào cuối năm 2005. Tuy nhiên, trách nhiệm về tài nguyên nước ở cấp quốc gia được phân chia giữa Bộ Tài nguyên và Môi trường (MoNRE) và Bộ Nông nghiệp và Phát triển Nông thôn (MARD). Các bộ ngành khác như ngành năng lượng cũng liên quan rất nhiều đến việc định hình chính sách tài nguyên nước .

---

[1] Dương Thanh An, Thạc sĩ Luật, Phó Chánh văn phòng, Cục Bảo vệ Môi trường (VEPA), Địa chỉ: 67 Nguyễn Du, Hà Nội, Việt Nam, Email: dtan@nea.gov.vn; Phan Thị Minh Loan, Thạc sĩ Luật, Chuyên viên Pháp lý, Ban Quản lý Đấu thầu, Tổng Công ty Điện lực Việt Nam (EVN), Địa chỉ: 18 Trần Nguyên Hãn, Hà Nội, Việt Nam, Email: loanpm@evn.com.vn

Khung luật pháp và chính sách hiện nay của Việt Nam nhìn chung là nhất quán và phù hợp với các ưu tiên chiến lược của WCD. Nghĩa vụ của các cá nhân và tổ chức nhằm bảo đảm việc khai thác hợp lý và bảo vệ môi trường có trong Hiến pháp của Việt Nam. Phần lớn nội dung của các ưu tiên chiến lược của WCD đều được phản ánh trong pháp luật của Việt Nam về tài nguyên nước, năng lượng, bảo vệ môi trường và phát triển bền vững.

Phát triển thuỷ điện là một ưu tiên quan trọng của Chính phủ Việt Nam. Kế hoạch tổng thể về phát triển ngành năng lượng của Việt Nam đến năm 2010 và 2020 xem thuỷ điện là một trong những nguồn năng lượng hiệu quả nhất và khẳng định rằng nguồn năng lượng này cần được khai thác tối ưu. Hiển nhiên, cần có các quy chế về việc xây dựng và vận hành các nhà máy thuỷ điện. Ở Việt Nam, những quy chế này không được soạn thảo riêng biệt cho thuỷ điện mà chỉ cho những công trình xây dựng nói chung. Vì vậy, việc xây dựng nhà máy thuỷ điện chỉ bị chi phối bởi những quy chế chung, cũng giống như đối với việc xây dựng nhà máy xi-măng chẳng hạn. Bởi vậy, cần có những quy chế cụ thể hơn để khung của Việt Nam đạt được sự tương đồng cao với khung của WCD trong các lĩnh vực về duy trì tính bền vững của các dòng sông và sinh kế.

Công nhận và bảo vệ các quyền và lợi ích hợp pháp

Ở Việt Nam, quyền con người (bao gồm các quyền dân sự và chính trị, kinh tế, xã hội và văn hoá) được quy định trong Hiến pháp năm 1992 và các văn bản pháp luật khác, chẳng hạn Luật Tài nguyên nước ban hành năm 1998 và Luật Đất đai năm 2003. Các nguồn tài nguyên đất và nước thuộc quyền sở hữu của tất cả nhân dân Việt Nam và được Nhà nước giao phó cho người dân sử dụng dài hạn và ổn định. Khi đất đai bị nhà nước trưng dụng, những người bị ảnh hưởng cần được bồi thường và hỗ trợ tái định cư. Luật pháp hiện nay đưa ra nhiều loại và mức độ bồi thường cũng như các thủ tục chi trả khác nhau.

Luật Tài nguyên nước quy định các tổ chức và cá nhân được phép sử dụng tài nguyên nước cho các mục đích sinh hoạt và sản xuất. Mặc dù luật này không bao gồm điều khoản cụ thể về quyền sở hữu nhưng có điều khoản gián tiếp thông qua quy định về việc các tổ chức và cá nhân này được phép hưởng lợi khi chuyển nhượng, cho thuê và thế chấp các tài sản của họ cho mục đích đầu tư vào việc sử dụng và phát triển các nguồn tài nguyên nước. Những đối tượng này đồng thời cũng có quyền nhận được bồi thường đối với những thiệt hại trong trường hợp giấy phép sử dụng tài nguyên nước của họ bị thu hồi trước thời hạn cho phép vì những lý do an ninh quốc phòng hoặc những lợi ích công hoặc lợi ích quốc gia khác. Thêm vào đó, họ có thể khiếu kiện tới các cơ quan Nhà nước và toà án đối với bất kỳ hành vi xâm phạm quyền sử dụng tài nguyên nước nào hoặc xâm phạm các lợi ích chính đáng khác.

Việc bồi thường cho những người bị ảnh hưởng do việc xây dựng/ vận hành của đập nước khi Nhà nước thu hồi đất được quy định bởi:

Nghị định 181/2004/NĐ-CP về việc thi hành Luật Đất đai (Thông tư 116/2004/TT-BTC 7 của Bộ Tài chính đã đưa ra hướng dẫn thêm về nghị định này); và Nghị định 197/ 2004/NĐ-CP về việc bồi thường, hỗ trợ và tái định cư khi Nhà nước thu hồi lại đất. Nghị định số 17/2006/NĐ-CP ngày 27/01/2006 về sửa đổi, bổ sung một số điều của các nghị định hướng dẫn thi hành Luật Đất đai và Nghị định số 187/2004/NĐ-CP về việc chuyển công ty nhà nước thành công ty cổ phần.

Có các điều khoản bồi thường riêng cho đất đai, tài sản, hỗ trợ tài chính, và tái định cư. Mức độ bồi thường được ghi rõ trong kế hoạch dự án đã được các cơ quan có thẩm quyền của Chính phủ phê duyệt.

Không có một điều khoản riêng biệt về việc xử lý những yêu cầu bồi thường cho những tổn thất gây ra từ các đập đang vận hành. Nhìn chung, luật về giải quyết các khiếu nại và tố cáo được áp dụng để giải quyết những yêu cầu bồi thường như vậy. Các điều khoản có liên quan trong Luật Bảo vệ Môi trường và Luật Tài nguyên nước cũng có thể được áp dụng đối với những yêu cầu này. Tuy nhiên, những khiếu nại về tổn thất do việc phát triển tài nguyên nước có thể được các nhà chức trách có thẩm quyền giải quyết theo các thủ tục kinh tế, dân sự hoặc hành chính. Nếu việc xây dựng và/hoặc vận hành đập dẫn đến những tác động tiêu cực về môi trường, các điều khoản của Luật Bảo vệ Môi trường có thể được áp dụng về vấn đề bồi thường. Các điều khoản về bồi thường nói chung được đề cập trong Bộ Luật Dân sự, 2005.

Đánh giá tác động môi trường

Theo Luật bảo vệ môi trường sửa đổi 2005 (sẽ chính thức có hiệu lực từ ngày 01/7/ 2006), lần đầu tiên Đánh giá Môi trường Chiến lược (ĐMC) được chính thức thừa nhận trong hệ thống pháp luật Việt Nam. Đối tượng phải thực hiện đánh giá môi trường chiến lược là các chiến lược, quy hoạch, kế hoạch (gọi chung là các dự án). Báo cáo ĐMC được lập đồng thời với quá trình lập dự án. Kết quả thẩm định ĐMC là một trong những căn cứ để phê duyệt dự án.

Tiếp tục các quy định về Đánh giá Tác động Môi trường (ĐTM) đã được thể chế hoá trong Luật bảo vệ môi trường 1993, trong Luật bảo vệ môi trường sửa đổi 2005, ĐTM vẫn tiếp tục được coi là bắt buộc đối với các dự án mới nằm trong danh mục các dự án phải lập ĐTM được quy định trong Luật này và các văn bản khác của Chính phủ hướng dẫn thi hành Luật, và cần bao gồm các đánh giá về các vấn đề xã hội, sức khoẻ và văn hoá. Quyết định phê chuẩn Báo cáo ĐTM là điều kiện bắt buộc để cấp giấy phép đầu

tư và đưa dự án đi vào hoạt động. Công tác kiểm tra, giám sát việc thực hiện các yêu cầu BVMT trong Báo cáo ĐTM và quyết định phê chuẩn Báo cáo ĐTM được cụ thể hoá trong Luật bảo vệ môi trường 2005.

Theo các quy định của Luật bảo vệ môi trường 2005 có liên quan tới ĐTM, việc tham gia của cộng đồng, các tổ chức, cá nhân có liên quan vào quá trình ĐMC và ĐTM được tăng cường hơn trước, cụ thể như sau:

- Trong giai đoạn lập Báo cáo ĐTM, ý kiến của Ủy ban nhân dân xã, phường, thị trấn (sau đây gọi chung là Ủy ban nhân dân cấp xã), đại diện cộng đồng dân cư nơi thực hiện dự án; các ý kiến không tán thành việc đặt dự án tại địa phương hoặc không tán thành đối với các giải pháp bảo vệ môi trường là một trong những nội dung cơ bản phải có trong Báo cáo đánh giá tác động môi trường.
- Trong quá trình thẩm định Báo cáo ĐTM, các tổ chức, cá nhân, cộng đồng dân cư có quyền gửi yêu cầu, kiến nghị về bảo vệ môi trường đến cơ quan tổ chức hội đồng thẩm định và cơ quan phê duyệt dự án; hội đồng và cơ quan phê duyệt dự án có trách nhiệm xem xét các yêu cầu, kiến nghị trước khi đưa ra kết luận/ quyết định.
- Nội dung của Quyết định phê duyệt Báo cáo ĐTM phải được báo cáo với Ủy ban nhân dân nơi thực hiện dự án, các loại chất thải, công nghệ xử lý, thông số tiêu chuẩn về chất thải, các giải pháp bảo vệ môi trường phải được niêm yết công khai tại địa điểm thực hiện dự án để cộng đồng dân cư biết, kiểm tra và giám sát.

Trước thời điểm Luật bảo vệ môi trường 2005 có hiệu lực, các văn bản luật khác có liên quan cụ thể tới ĐTM hiện nay đang còn hiệu lực bao gồm:

- Nghị quyết 05/1997/QH10 của Quốc hội về các tiêu chuẩn đối với những dự án quốc gia quan trọng;
- Nghị định 175/CP của Chính phủ về việc thi hành Luật Bảo vệ Môi trường;
- Nghị định 143/2004/NĐ-CP của Chính phủ về bổ xung, chỉnh sửa đối với Nghị định 175/CP; và
- Thông tư 490/1988/TT-BKHCNMT của Bộ Khoa học, Công nghệ và Môi trường hướng dẫn về việc chuẩn bị và thẩm định các báo cáo ĐTM.

Nghị định 175/CP quy định sau khi thẩm định các báo cáo ĐTM, các dự án đã bắt đầu triển khai trước ngày 10 tháng 1 năm 1994 được phân loại như sau: (a) đạt tiêu chuẩn được phép tiếp tục triển khai, không cần xử lý môi trường; (b) cần xây dựng các công

trình xử lý chất thải; (c) cần thay đổi công nghệ và/hoặc vị trí địa lý; hoặc (d) cần phải chấm dứt giấy phép hoạt động.

Yêu cầu tất cả các tổ chức và đơn vị sử dụng tiêu chuẩn môi trường của Việt Nam khi lập báo cáo ĐTM. Tuy nhiên, trong các lĩnh vực mà tiêu chuẩn Việt Nam chưa được xây dựng, tiêu chuẩn của các nước khác có thể được áp dụng với sự cho phép chính thức của các cơ quan có thẩm quyền.

Cộng đồng tiếp cận thông tin và sự tham gia của cộng đồng trong việc ra quyết định

Hiến pháp ghi rõ việc người dân được thông tin về việc ra quyết định là một nhân quyền. Nguyên tắc "dân biết, dân bàn, dân làm, dân kiểm tra" là một phần không thể thiếu trong quá trình phát triển ở Việt Nam. Sự tham gia của người dân, kể cả trong lĩnh vực phát triển tài nguyên nước và quản lý đập, được quy định bởi luật pháp và tập trung vào quá trình lập kế hoạch. Người dân cũng được phép tham gia vào quá trình thẩm định ĐTM như đã được ghi rõ trong Luật bảo vệ môi trường và Nghị định 175/CP của Chính phủ về việc thi hành luật, và sự tham gia của người dân trong quá trình ĐTM đang được thúc đẩy.

Nhìn chung, việc tiếp cận thông tin và sự tham gia của người dân trong quá trình ra quyết định được phản ánh trong các luật và chính sách khác đã đề cập ở trên, đặc biệt là Quy chế Dân chủ ở cấp cơ sở, ban hành kèm theo Nghị định 79/2003/NĐ-CP của Chính phủ ngày 7/7/2003.

Về sự tham gia của người dân trong việc chuẩn bị và phê duyệt quy hoạch xây dựng, Luật Xây dựng ban hành năm 2003 đã chi tiết hoá việc thu thập ý kiến của dân về các quy hoạch tổng thể. Tuy nhiên, không có một điều khoản riêng nào về sự tham gia của người dân trong việc ra quyết định liên quan đến đập hoặc các dạng phát triển tài nguyên nước khác. Trong khi xác định các phương thức để người dân có thể tham gia vào quá trình phát triển bền vững, chương trình nghị sự 21 của Việt Nam đặt vai trò của người dân trong việc quản lý xã hội và cộng đồng lên hàng đầu. Chương trình nghị sự 21 quy định, đối với những dự án lớn có tác động mạnh đến dân số, sự tham gia của cộng đồng trong quá trình ĐTM cần được tăng cường thông qua việc thể chế hoá vai trò tham gia của cộng đồng cũng như triển khai các biện pháp thực hiện. Chương trình cũng đưa ra những hoạt động ưu tiên cần thiết cho việc thúc đẩy sự tham gia trong hoạt động phát triển bền vững đối với từng nhóm xã hội, trong đó đặc biệt chú trọng tới phụ nữ và các dân tộc thiểu số.

Quản lý cơ sở hạ tầng

Luật pháp hiện nay quy định một cách cụ thể các nguyên tắc về quản lý và cải thiện các cơ sở hạ tầng tài nguyên nước hiện có, đặc biệt là đối với tầm quan trọng về vai trò của mỗi đập. Quy trình thực hiện đối với các dự án mới nói chung và các dự án đập nói riêng được luật pháp chi phối. Các đập hiện có được quản lý theo các quy định trong Pháp lệnh về Khai thác và Bảo vệ các Công trình Thuỷ lợi (số 32/2001/PL-UBTVQH10). Nghị đinh 143/2003/NĐ-CP của Chính phủ đưa ra hướng dẫn cho việc thực hiện pháp lệnh này.

Các yêu cầu về kiểm tra và đánh giá được đưa ra theo nguyên tắc của các quy định hiện hành. Pháp lệnh về Khai thác và Bảo vệ Công trình Thuỷ lợi quy định các đơn vị khai thác hệ thống thuỷ lợi cần kiểm tra, phát hiện và xử lý kịp thời các sự cố, duy tu, đảm bảo an toàn cũng như kiểm tra và sửa chữa các công trình trước và sau mỗi mùa bão và mùa lũ.

Việc cấp giấy phép vận hành đập được quy định trong Luật Tài nguyên nước và Nghị định 179/2001/NĐ-CP của Chính phủ về việc thi hành Luật Tài nguyên nước.

Sự tuân thủ

Các quy định về tuân thủ đã được xây dựng trong hệ thống pháp luật và tổ chức thực hiện. Trong Luật Tài nguyên nước, Luật Xây dựng, Luật Đất đai, Luật Bảo vệ Môi trường và các quy định khác đều có cơ chế chi trả bồi thường và định cư, thanh tra kiểm soát, khen thưởng và xử phạt. Luật Tài nguyên nước quy định việc bảo vệ và sử dụng tài nguyên nước phải tuân thủ quy hoạch vùng của các lưu vực sông đã được cơ quan Nhà nước có thẩm quyền phê duyệt. Thêm vào đó, việc tuân thủ các quy hoạch, quy trình và quy định đã được các cơ quan có thẩm quyền phê duyệt là một trong những trách nhiệm của các đơn vị và cá nhân khai thác các công trình thuỷ lợi được quy định trong Pháp lệnh về Khai thác và Bảo vệ các Công trình Thuỷ lợi.

Các công trình xây dựng nói chung và các công trình xây dựng đập nói riêng đều phải tuân theo các nguyên tắc đã đề ra trong Luật Xây dựng, một trong số đó là việc xây dựng các công trình cần phải theo đúng với thiết kế và quy hoạch tổng thể đã được phê duyệt, cũng như phải phù hợp với các điều kiện tự nhiên và đặc biệt là điều kiện văn hoá xã hội của từng vùng. Nghiêm cấm xây dựng các công trình không tuân theo quy hoạch tổng thể. Công trình xây dựng cũng cần phải được thực hiện kết hợp với sự phát triển kinh tế xã hội và an ninh quốc phòng. Tuy nhiên không có quy định riêng nào về việc tuân thủ cơ chế chia sẻ lợi ích.

Theo các quy định về bảo vệ môi trường, một dự án như xây dựng đập cần phải tiến hành một nghiên cứu ĐTM trong đó bao gồm đánh giá về các yếu tố môi trường và xã hội. Ngoài ra, cũng cần có các báo cáo nghiên cứu khả thi và tiền khả thi để phân tích và đánh giá các lợi ích về kinh tế, xã hội và môi trường, và cho phép chia sẻ các lợi ích và chi phí.

Không có luật nào đề cập đến nhu cầu cần có một kế hoạch tuân thủ. Tuy nhiên, quy trình bồi thường và tái định cư được quy định trong Nghị định 197/2004/NĐ-CP của Chính phủ, và Thông tư 116/2004/TT-BTC. Các vi phạm quy định về thu hồi đất đai được bao hàm trong Nghị định 181/2004/NĐ-CP của Chính phủ, trong đó chỉ rõ những hành vi được xem là vi phạm việc thu hồi đất cũng như các hình thức xử phạt đối với các vi phạm này. Các hình thức xử phạt bao gồm những biện pháp kỷ luật như cảnh cáo, giảm lương, giáng chức, cách chức, hoặc sa thải. Các hình thức xử phạt đối với việc không tuân thủ cũng được quy định rõ trong một số các luật và quy định khác bao gồm: (a) Bộ luật Hình sự năm 1999; (b) Luật Dân sự; (c) Nghị định 121/2004/NĐ-CP của Chính phủ về xử lý vi phạm hành chính trong lĩnh vực bảo vệ môi trường; và (d) các luật khác quy định những hình thức xử lý vi phạm hành chính ở những lĩnh vực cụ thể như lâm nghiệp và thuỷ sản. Các chi phí bồi thường và tái định cư phải được đưa vào ngân sách của dự án (Nghị định 197/2004/NĐ-CP của Chính phủ).

Luật Tài nguyên nước, Luật Bảo vệ Môi trường, Luật Đất đai và Luật Xây dựng đều đề cập đến việc thanh tra về việc tuân thủ và thực thi những luật này. Theo những luật này, các Bộ: (a) Bộ Nông nghiệp và Phát triển Nông thôn (phát triển tài nguyên nước và các công trình thuỷ lợi); (b) Bộ xây dựng (các công trình xây dựng); và (c) Bộ Tài nguyên và Môi trường (bảo vệ môi trường và đất đai) có thẩm quyền thanh tra trong lĩnh vực quản lý của Bộ mình.

Không có điều khoản nào về khuyến khích và/hoặc xử lý vi phạm đối với việc không tuân thủ các hợp đồng/ thoả thuận về đập. Các khía cạnh này cần được đưa vào thoả thuận giữa các bên tham gia; hoặc theo cách khác, các điều khoản chung liên quan đến thoả thuận/ hợp đồng có thể được áp dụng. Thêm vào đó, các quy định về khuyến khích và xử lý vi phạm nói chung có thể được sử dụng.

Luật Xây dựng nghiêm cấm hành vi tham nhũng trong công trình xây dựng. Thêm vào đó, Luật Tài nguyên nước và Pháp lệnh về Khai thác và Bảo vệ các Công trình Thuỷ lợi cũng quy định bất kỳ ai sử dụng nguồn phí và lệ phí nước một cách bất hợp pháp, tuỳ theo tính chất và mức độ vi phạm, sẽ bị xử lý từ cảnh cáo đến xem xét truy cứu trách nhiệm hình sự. Nếu bất kỳ hư hại nào gây ra do tham nhũng, (những) người liên quan sẽ phải bồi thường theo quy định của Luật Tài nguyên nước và Pháp lệnh về

Khai thác và Bảo vệ Công trình Thuỷ lợi. Thêm vào đó, các quy định phòng chống tham nhũng nói chung có thể được áp dụng.

Bảo tồn các hệ sinh thái thuỷ sinh và nguồn lợi sinh học

Các quy định về quản lý đặc dụng, các biện pháp bảo vệ, và việc phát triển rừng tự nhiên được quy định trong Quyết định 08/2001/QĐ-TTg của Thủ tướng Chính phủ về các quy định đối với việc phân loại và quản lý vườn quốc gia, các khu bảo tồn thiên nhiên, văn hoá, lịch sử và môi trường (các khu bảo vệ cảnh quan và rừng phòng hộ). Sông và suối liên quan đến các khu rừng này được coi là một phần của rừng và do đó được quản lý và bảo vệ theo những quy định quản lý bảo vệ rừng. Nghị định 109/2003/NĐ-CP của Chính phủ về Bảo tồn và Phát triển Bền vững các vùng Đất ngập nước đưa ra những quy định về bảo vệ các khu bảo tồn đất ngập nước, trong đó bao gồm rừng ngập mặn.

Các biện pháp ràng buộc về mặt luật pháp nhằm phòng ngừa, giảm thiểu và/hoặc giảm nhẹ những tác động bất lợi của đập đối với các sông chảy qua các khu bảo tồn được trực tiếp áp dụng thông qua các ĐTM.

Chính phủ Việt Nam hiện đang rất quan tâm đến khái niệm và thực tiễn về “dòng chảy môi trường”. Mục đích của “dòng chảy môi trường” là nhằm đảm bảo duy trì chế độ dòng chảy cần thiết của dòng sông, vùng đất ngập nước hoặc vùng bờ sao cho các hệ sinh thái và những lợi ích của chúng ở những nơi có các nhu cầu sử dụng nước cạnh tranh được duy trì. Các loài có nguy cơ và/hoặc bị đe doạ được bảo vệ thông qua các luật và quy định khác nhau bao gồm Luật Bảo vệ và Phát triển rừng ban hành năm 2004, Luật Bảo vệ Môi trường năm 2005, Luật Thuỷ sản năm 2003, Pháp lệnh về Bảo vệ và Kiểm dịch thực vật năm 2001, và Nghị Định 175/1994/NĐ-CP của Chính phủ về việc thực hiện Luật bảo vệ môi trường. Đặc biệt Bộ luật Hình sự quy định hình phạt tối đa 7 năm tù và các hình phạt bổ xung khác đối với các hành vi vi phạm các quy định liên quan đến việc bảo vệ các loài động vật hoang dã quý hiếm.

Các sông chung và sông liên quốc gia

Về sự hợp tác trong việc chia sẻ tài nguyên nước, các điều khoản trong Luật Tài nguyên nước quy định một cách gián tiếp về việc chuyển nước từ một lưu vực hoặc tiểu lưu vực tới lưu vực hoặc tiểu lưu vực khác. Trong Chương trình nghị sự 21, việc tăng cường hợp tác quốc tế về quản lý tài nguyên nước, đặc biệt là hợp tác với các nước láng giềng có chung sông, được ưu tiên để đảm bảo sự phát triển bền vững tài

nguyên nước. Sự hợp tác trong phát triển bền vững thuộc lưu vực sông Mê Kông được đặc biệt chú trọng.

Trong các luật, quy định và chính sách khác cũng đề cập đến vấn đề hợp tác trong việc quản lý các nguồn nước chung và liên quốc gia. Luật Tài nguyên nước đưa ra những nguyên tắc về quan hệ quốc tế liên quan đến tài nguyên nước. Nhà nước khuyến khích mở rộng quan hệ và hợp tác quốc tế trên cơ sở nghiên cứu khảo sát, bảo vệ, khai thác và sử dụng tài nguyên nước, và trong việc ngăn ngừa và khắc phục những tác hại do nước gây ra với cách nhìn hướng tới sự phát triển tài nguyên nước. Điều này phù hợp với nguyên tắc về bảo vệ chủ quyền, toàn vẹn lãnh thổ và cùng có lợi, và phù hợp với các Công ước quốc tế mà Việt Nam đã ký kết hoặc đã tham gia.

Khuyến nghị

Chiến lược dài hạn về phát triển tài nguyên nước ở cấp quốc gia và khu vực cần được ban hành. Để đảm bảo phát triển bền vững tài nguyên nước, các cách tiếp cận linh hoạt cần được xem xét đến khi xây dựng chiến lược tài nguyên nước của quốc gia. Những quy định về sự tham gia của cộng đồng trong việc ra quyết định cần được cải thiện trong toàn bộ quá trình thực hiện dự án chứ không chỉ ở giai đoạn lập kế hoạch. Phương pháp thực hiện dự án cũng cần được cải thiện. Đặc biệt, do tác động nghiêm trọng của các dự án đập đối với người dân địa phương, sự tham gia của cộng đồng trong các dự án này cần có những quy định riêng. Luật pháp không những cần công nhận quyền tham gia của người dân mà còn phải chỉ rõ các biện pháp để cho phép họ tham gia, như điều khoản về hỗ trợ chuyên môn và tài chính, thông tin, pháp lý, cũng như thời gian cần thiết cho việc xem xét và tham vấn.
Các cơ chế tuân thủ cũng cần được cải thiện. Cần có thêm các quy định tăng cường tuân thủ. Các cơ chế khuyến khích, khen thưởng và xử phạt cần phải là một phần của các công cụ tuân thủ.
Việc cải tiến các quy định hiện hành cần được tiến hành đi đôi với việc cải thiện năng lực quản lý bảo vệ môi trường và tài nguyên nước. Việc giáo dục và phổ biến thông tin về các điều khoản pháp luật liên quan đến tài nguyên nước, bảo vệ môi trường và phát triển bền vững cần được tăng cường.
Hợp tác quốc tế về quản lý tài nguyên nước và bảo vệ môi trường đã có trong khuôn khổ hiện nay của Việt Nam. Cũng như đối với các lĩnh vực khác, để có hiệu quả hơn, việc thực hiện cần được tăng cường.

The World Conservation Union

Founded in 1948, the World Conservation Union (IUCN) brings together States, government agencies and a diverse range of non-governmental organizations in a unique world partnership: over 1000 members in all, spread across some 140 countries.

As a Union, IUCN seeks to influence, encourage and assist societies throughout the world to conserve the integrity and diversity of nature and to ensure that any use of natural resources is equitable and ecologically sustainable. A central Secretariat coordinates the IUCN Programme and serves the Union membership, representing their views on the world stage and providing them with the strategies, services, scientific knowledge and technical support they need to achieve their goals. Through its six Commissions, IUCN draws together over 10,000 expert volunteers in project teams and action groups, focusing in particular on species and biodiversity conservation and the management of habitats and natural resources. The Union has helped many countries to prepare National Conservation Strategies, and demonstrates the application of its knowledge through the field projects it supervises. Operations are increasingly decentralized and are carried forward by an expanding network of regional and country offices, located principally in developing countries.

The IUCN Asia Region extends from Pakistan in the west to Japan in the east, Indonesia in the south and Mongolia in the north. There are 23 countries in the region. IUCN maintains offices in Bangladesh, Cambodia, China, Lao PDR, Nepal, Pakistan, Sri Lanka, Thailand, and Viet Nam. The regional office is located in Bangkok, Thailand. There are more than 150 IUCN members in Asia, including most major nature conservation NGOs in the region.

The Regional Environmental Law Programme and the Regional Wetlands and Water Resources Programme are two of the eight regional thematic programmes which together form the Ecosystem and Livelihoods Group (ELG) of IUCN in Asia. The role of ELG and its thematic programmes is to support the work carried out by IUCN's country programmes in Asia, as well as managing a portfolio of regional projects.

IUCN
The World Conservation Union

The World Conservation Union (IUCN)
Asia Regional Office
63 Sukhumvit Soi 39
Klongtan, Wattana
Bangkok 10110, Thailand

tel + 66 2 662 4029
fax + 66 2 662 4388

iucn@iucnt.org
www.iucn.org/places/asia/

Schweizerische Eidgenossenschaft
Confédération suisse
Confederazione Svizzera
Confederaziun svizra

Swiss Confederation

Federal Office for the Environment FOEN

Oxfam America