



Preparedness of Participatory Community's health impact assessment from development project locating in borderlands: a case study of Hongsa Coal project in Nan province

Researchers Team led by Dr. Darunee Paisarnpanitchkul, Legal Research & Development Center, Faculty of Law, Chiang Mai University

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The research entitled “Preparedness of Participatory Community's Health Impact Assessment from Development Projects locating in Borderlands: a case study of Hongsa coal fire power plant in Nan province” (the research) has been conducted in Chalermprakiat district, Nan province during 2017-2018 by a team of health experts, Community Health Impact Assessment expert, legal experts in collaboration with coal campaigners and lawyers from various organizations and universities in Thailand such as Foundation for Natural Resources and Environment of FENR, ENLAW Foundation, Community Resources Centre Foundation and Center of Protection and Revival of Community's Rights. The research has been supported by Health System Research Institute.

This research has been initiated and emerged from the results of baseline assessment conducted, towards “the trans-border risks with impacts to health and environment” of the mega project carried out, in case of the Hong Sa power plant. The research methodologies comprises two main components, as: (i) the first – the research for development of self-monitoring system through the Community Health Impact Assessment (CHIA) as a tool; (ii) the second – the review of laws and policies of Thailand and of Laos PDR in aspects of supervision and management of trans-border impact (pollution); and (iii) the recommendations made. It could be summarized with finding as follows.



Photo 1 and 2: Community's livelihood and way of living in NamRee and NamChang village, Chalermprakiat district, Nan province.



Photo 3: Hongsong coal mining and power plant in Xayaburi province, Lao PDR.

The findings:

The set of information acquired from community and community health, it addressed that the population in target communities consisted of Thais and non-Thais, in total 456 households, with 1,767 persons as: 217 households or 830 persons from Baan Nam Chang Pattana; and 239 households or 937 persons from Baan Nam Ree Pattana, where majority of them were belong to Lua ethnic group – members of indigenous peoples residing there before the establishment of official villages. Both two communities were located in the valley surrounding with mountainous areas and there were two main rivers accessible for general consumption and usage and for agricultural purpose, as: Lam Nam Chang and Lam Nam Ree. These rivers were emerged and accumulated from small brooks and terrains surrounding the villages which somehow would be the same water sources with those in Laos PDR.

For the community maps (see the Photos No. 28 and 29 in Chapter 2), they presented the settings of all households found in communities, together there were marks of all concerned patients for monitoring and helps provided, e.g. the high blood pressure, diabetes and nephropathy, etc. These were also including the settings of public authorities in areas, e.g. the sub-district healthcare stations/hospitals; schools; learning centers; forest offices; highland agriculture development

centers; lines of transportation; forestry areas; water sources for consumption and for agriculture; food sources; animal farms and husbandries; plantations and types of plant covering both for commercial and household uses.

In the matter of commercial crops which was the main income of communities, in Baan Nam Chang Pattana, there were banana, coffee bean, mulberry, cashew nut, corn as feed and millet, but for upland rice, pumpkin and other, they would be planted for only household consumption, and in Baan Nam Ree Pattana, there were mulberry, coffee bean, corn as feed and now it started to plant cashew nut for commercial purpose in the future. And for upland rice, home-grown vegetables and other, they would be planted for only household consumption, likewise those in Baan Nam Chang Pattana.

Results of the CHIA process undertaken (phases 1 and 2) towards the making of “risk map”, apart from the community map, community calendar and sequences of incidents and significant change (Timeline), there were some vital points found with final outcomes of the research carried out, as: the concerns of communities towards the trans-border risk affecting to health and environment in communities, as: within the past two years, it found that for the rice, its leaves were burnt and some even died with none of productivity, while also for the tips of cashew nut trees, there were also burning marks, even they were properly and well treated with water supplied. For the lychee trees once they were bearing tiny fruits, the burning marks were incurred and eventually causing the falling-down of the most of them, the same with mango trees once they bore blooming fruits, they would become dried and fallen down, while their leaves were still greenery, etc. These abnormal incidents were then scrutinized and rechecked whether they were linked to pollutions incurred from the coal power plants and these were some questions raised by communities themselves with the thinking forwards for ways corresponding with the risk.

The research team also identified that the most serious concern of villagers was the impacts incurred to their cash crops, as the agricultural products might be damaged and declined and causing of the economic loss, since they would be principal incomes gained for their necessities. The second serious concern of villagers was the health impacts incurred from the contamination of poisonous substances and pollutions accumulated in soils, water and air including food crops, e.g. rice and vegetable. These would cause the chronic and emerging sicknesses and diseases with harm induced in the long run.

And although the majority of villagers were entitled to the healthcare schemes with social security and with accessibility to sub-district healthcare services centers and hospitals nearby the villages, but these were only for the basic and primary healthcare services provided with first aids or emergency incidents.

Thus, the making of risk map of communities, it would be the vital work with further backing-up and supportive needs and such map would cover aspects of environment and health, especially towards the abnormality with agricultural productivity; the vulnerable groups with health problems and those with respiratory system and blood vessels, including those with pregnancy and maternity (mother and infant) whom might be more sensitive than people in general for the design of impact monitoring system toward the community furthermore. And this was relating to multi-sector entities and it deems expedient to cooperate among the government agencies and people. The agencies shall take part with information received and sharing for finding solutions are: those in

charge with agriculture, health, irrigation and local administration, as this would be necessary for having more and wide cooperation with all sectors.

Sets of international and domestic legal knowledge relating to Thailand and Laos PDR, in case of Thailand, there would be laws and mechanisms of Thai state pertaining to the management of problems incurred from pollution made by the overall mega projects induced by Thai state, as they were merely designed with not taking in account for the trans-border impacts from pollutions possibly incurred. **The legal systems and mechanisms recently existed have focused to the preventions and solutions for only incidents and problems induced in the country only, which certainly not enough for protection and promotion of rights and liberty of Thai people from those trans-boundary threats and pollutions.** In this aspect, it implies that there are gaps and loopholes found which lack of efforts and systematic solutions made by Thai government.



Photo 4 and 5: Community's discussion during the Community Health Impact Assessment Process in Nan province, Lao PDR

As to the Laos PDR's laws, it has been found that Laos PDR adopts a range of mechanisms to deal with environmental disputes including the ones to cope with international environmental disputes or transboundary environmental disputes. It could be said that Laos PDR's environmental laws are more advanced than Thailand's as the drafters have taken into account transboundary pollution since the inception of the law while Thailand's environmental laws fail to address the issue. Nevertheless, even though Laos PDR's laws incorporate mechanisms to deal with international environmental disputes, but none of them specify the implementing agency to deal with such problems, nor do they provide for any procedural rule. It is thus challenging as to when transboundary environmental problems occur, what would be the measures the Lao government come up with to deal with the problems systematically and whether such laws can be effectively enforced or not.

Regarding concerned international laws, it has been found that there are major international environmental and human rights laws to be reckoned with including the Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration) 1972 which provides for sovereign power, state liability, precautionary principle, polluters-pay-principle, and principles and procedure for owners of enterprises that may render environmental impacts. The Sustainable

Development Goals (SDGs) and the UN Guiding Principles on Business and Human Rights (UNGPs) are not legally binding. They are just soft laws or declarations that prescribe fundamental concepts and offer basic guidelines to raise the awareness at the international level. Nevertheless, the research team has found that the Stockholm Declaration should be adopted with more rigorously than just being a guideline or a declaration.

The researchers have found the Stockholm Declaration and the Rio Declaration should attain the status of international customary law, similar to the Universal Declaration on Human Rights (UDHR). In addition, Thailand's jurisprudence concerning international law offers concepts about state liabilities per the two Declarations including the state's responsibility for 'risky ventures' which may render ecological and environmental impacts including nuclear power plants or the launch of satellites to orbit around the earth or other activities which may render transboundary hazards.

In such circumstances, states are obligated to provide for insurance policies and to ensure that such activities under the supervision of the state, whether they are implemented by private or governmental sector, are implemented in compliance with safety standards for the public welfare and the environment.

International human rights laws that attain the status of international customary laws including UDHR, however, lack mechanisms to monitor compliance and to compel states to act according to their obligations. Meanwhile, International Covenant on Economic, Social and Cultural Rights (ICESCR) obliges both Thailand and Laos PDR as state parties and offers mechanisms to monitor and to urge state parties to act in its compliance. Thailand is also bound by treaties to report periodically to treaty-based bodies. Per Article 12, Thailand is obligated to present a country report, the next of which has to be submitted within 2019. There is, however, not punitive clause for failure to produce such country report. It only offers a mechanism to help state parties to gradually get adapted and to act more in compliance with their obligations. In addition, civil society organizations are offered the chance to submit in parallel their shadow reports.

Recommendations:

An ongoing research should be conducted to constantly monitor the community's health impacts. The research team finds it pertinent that an effort be constantly made to develop a robust health impact monitoring regime in the community. Findings from this study should inform the research team in its effort to develop such initiative during the conceptual stage. It shall also inform the development of data community data collection framework and the development of appropriate technology which can be employed by community members to collect the data by themselves. Such collaboration shall be made between the community and the interdisciplinary academic team.

As to information useful for decision making at the policy level, the sub-district healthcare stations/hospitals and the Khiun Nan sub-district administration organization shall be offered a pivotal role in collecting information in their own community as well as the information collected by the Chalermprakiat Hospital. As to environmental quality data, it shall derive from data collected by the Pollution Control Department (PCD) and Hongsa Power Company Limited. Such data from local sources shall be supplied to the decision making process at the policy-making level through concerned agencies including the Nan Provincial Public Health Authority to the Ministry of Public

Health (Department of Health and Department of Disease Control). This will enable MoPH to have access to the information that can be used when making a collaboration with its counterpart in Laos PDR in order to protect the health of vulnerable populations on both countries.

In addition, the research team has the following recommendations for the development of health impact monitoring system, theoretically and procedurally;

- 1) The health impact monitoring system should be developed based on precautionary principle whereby measures for the prevention and the solution must be developed based on the potential risks without having to wait until people fall ill, for example, the assessment of potential impacts on the people's livelihood and income, migratory trend, migration, etc.
- 2) Support should be offered to help the community to develop a learning process to assess potential risks from coal-fired power plant (Health Literacy). Such process has to be developed based on local dialects including Lawa which is understood in the community. This should help the villagers to understand, be aware of and be able to get timely adapted to cope with an arising potential risk.



Photo 6 Lua Villagers in the traditional dress for the celebration of Phu PaYak Festival, Nan province

3) Capacity building should be given to local community to enable the vulnerable Lawa people to develop their Community-led Monitoring System based on Co-Design, CoCreation principle. The Co-Production of Knowledge should also be supported to make use of expert knowledge and local wisdom. Simple indicators should be developed to make possible data collection using appropriate technology. Such databased can be linked up with the state database, both in Thailand and Laos PDR and Hongsa Power Company Limited as well. This should help to make possible a system to monitor and deal with any arising impacts. The data can also be used to develop a preventive system and solutions in a timely manner.

4) Capacity building should be offered to Baan Nam Ree sub-district healthcare stations/hospital in terms of the development of necessary human resource and infrastructure to ensure the delivery of effective health services to address pollution from the coal-fired power plant, for example, personnel should be offered and access to advice from expert medical doctors, referral service, proper budget allocation, stable power supply should be made available to the primary health facility most immediate to the community and the only facility accessible by villagers of both villages.

Recommendations made by the legal research team:

For short-term recommendations:

People living in Chalermprakiat district, Nan province are entitled to their rights exercised under Constitution of the Kingdom of Thailand, B.E. 2560 (2017), Section 43 (3) together with the National Health Act, B.E. 2550 (2007), Section 11 paragraph one, with the request and obligation made to government authorities to conduct the health impact assessment pertaining to the pollutions incurred from the Hong Sah power plant project, including to regulate the preventive and protective measures for rights and liberty of people in the communities, through the using of basic information gained from the environmental and health impact assessment towards people compiled as data-gathering through the research conducted in this project.

For long-term recommendations:

The Thai government shall entrust or assign any authorities existed or establish new entity (ies) with powers and mandates to solve problems relating to the project with possible transboundary impacts incurred with clarity. This entity would play a role of focal point carrying out the direct powers and duties for coordinating with both domestic and international agencies for solving of problems incurred from transboundary pollution, including the exercise of duties for remedial or support provided to people impacted or possibly impacted from the project or activity induced outside Thai jurisdiction, for the exercise of spectrum of rights, including to litigate for the rights protection for living in good environment, e.g. the healthcare agency (the Ministry of Public Health) shall be a focal point for prevention and monitoring the transboundary health risk by coordinating with other government agencies, e.g. the Pollution Control Department and private sectors, while shall also encourage people on the ground, Nan provincial community-based organizations to take part in acknowledgement and following-up their health impact assessment.

The joint working group between Thailand and Laos PDR shall be established with role for conducting of studies in any common issues designed, as within the Hong Sa power plan project, there were various special activities induced with compatibility of standard measures between Thailand and Laos PDR, nevertheless there was none of information sharing or communication given to communities and Thai government authorities, thus that study could not be shaped with actual baseline information for responding to concerns incurred in Thai communities.

While there were representatives of Laotian government taking part with help to design such special activities with following-up of specific topics, but there was none of Thai government's representative taking part for shaping-up of life-quality inquiry for people living there. Thus it deems expedient to setting-up the joint working group between Thailand and Laos PDR for conducting studies and researches on various common issues with responding to life quality standard leveraging for people on the ground, the Thai government representatives shall be recruited from both local and national government authorities. They shall be entrusted to conduct the negotiation process with governments of neighboring countries governments for making of agreements on rights and duties as well as accountabilities and liabilities of stakeholders pertaining to such development activities whereas causing the transboundary impact.

This would encourage all sectors to have more awareness on rights, duties and accountabilities of them, covering the initial phase with pre-production and undertaking of preventive approach with no-harm manners taken towards rights and livelihoods of people on the ground of both in Thailand and its neighboring countries till the end with filling-in gaps and loopholes incurred. The environmental laws and regulations of Laos PDR shall be replicated as development guidance.

For the private sectors as entrepreneurs, although the building-up of power plant(s) was not in Thai jurisdiction, but the transboundary risks or further transboundary risk prevention manners shall be induced for not making harms to Thailand, the private sectors as entrepreneurs shall be get readiness for handling and preparation with risk management, in accordance with the Precautionary Approach and the Polluter Pays Principle (PPP).

For the propelling with additional amendment on environmental laws, it deems appropriate for the mega development projects possibly causing transboundary harms to conduct the transboundary environmental, health and social impact assessment (Transboundary EIA/EHIA) covering vast areas with risks, including the Thai government shall enact the new laws or policies with concremented actions made for investigation on transboundary human rights violation with accountabilities upholding beyond border.

The Thai government shall convene and initiate the ASEAN binding instruments for ensuring of accountabilities from mega development projects which possibly transboundary harms made in various dimensions or with "risk". The ASEAN Transboundary EHIA and Transboundary Impact Assessment shall be introduced and conducted with more focusing on participation process.

Keywords: Transboundary Impact, Cross Border, Transboundary Risk, CHIA, ETOs, UNGP