

Interaction of Architecture and Agents in the Governance of International Waters¹

- Institutional influence on NGO Coalitions along the Mekong river -

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1. Introduction

Nongovernmental organizations (NGOs) are becoming key agents in environmental governance (Florini and Simmons 2000; Betsill and Corell 2008). The engagement of NGOs in environmental decision-making escalated particularly after the United Nations Conference on the Human Environment in 1972 (Betsill and Corell 2008: 1). These engagements take place within architectures of different levels including local, national and international (Keck and Sikkink 1999; Florini and Simmons 2000). Although these architectures have potential influence on the work of NGOs, limited academic studies focus on this influence, creating the gap in academic knowledge. This research aims to fill this gap through understanding how governance architecture influences the work of NGOs in the context of international water governance.

Various scholarly works highlight how NGOs attempt to influence the institutions which compose the architecture of environmental governance: some suggest how NGOs attempt to influence society's norms (Finnemore and Sikkink 1998; Koh 1998); others

¹ This paper was drafted for the Earth System Governance Tokyo Conference (28-31 January 2013) and is based on the preliminary findings from the author's PhD research. The author appreciates any comments and feedbacks. Please do not quote without permission from the author. The paper was submitted to the conference secretariat on 30th of November 2012

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examine how NGOs attempt to influence governments, organizations, and their decision-making and compliance processes on law and policy (Keck and Sikkink 1998; Betsill and Corell 2001; Elliott and Schlaepfer 2001; Eberlein et al. 2010; Raustiala 1997). Others scholars discuss different roles NGOs play as a way to influence decision-makings and enforcement of law and policies. These roles include: ‘watch-dog’ to states’ compliance with legal obligations (Charnovitz 1997: 274; Gemmill and Bamidei-Izu 2002; Charnovitz 2006: 354); providers of intelligence to policy-makers (Charnovitz 1997: 274); representing the voices from the grass roots (Bodansky 1999: 619; 2010: 125); and being ‘norm entrepreneurs’ who cultivate and disseminate norms in the society as a way to raise awareness on certain issues (Finnemore and Sikkink 1998).

However, only limited studies focus on how governance architecture within which NGOs operate influences the actions and strategies of NGOs. Biermann et al (2010) refer to the concept of governance architecture as the ‘overarching system of public or private institutions, principles, norms, regulations, decision-making procedures and organizations that are valid or active in the issue area (Biermann et al. 2010: 281)’. This term is used similarly to the term ‘institution’ which is used widely among scholars of new institutionalism and often understood as rules, norms, strategies and organizations adopted by the society (Ostrom 1999: 37; Hall and Taylor 1996; Immergut 1998). Understanding the influence of the governance architecture or institutions on NGOs who often play the role of agent in environmental governance (Biermann et al. 2010: 283) can provide insights into further understanding opportunities and barriers for NGOs operating within different institutional contexts.

Therefore, this research aims to understand how institutions influence the NGOs’

work in the context of international water governance. Three key categories of institutions are analysed including formal rules, informal rules and organizations. The research analyses how the institutional differences within which NGOs operate influence the way NGOs determine their actions. As an example which highlights these differences, this research conducts a comparative analysis of institutional influences on actions taken by NGO coalitions in Cambodia and Vietnam. The issue at stake is the riparian states' decision-making process towards the proposed Xayaburi hydropower Dam on the Mekong River. The analysis will be conducted using an analytical framework based on the Institutional Analysis and Development Framework (Ostrom 1999). This paper will discuss the analytical framework and the key issues related to the Xayaburi hydropower dam on the Mekong river, and will highlight preliminary findings from the research.

2. Analytical Framework

As a way to understand how institutions influence NGO coalitions' actions, an analytical framework was developed based on new institutionalism. This theoretical approach was taken as it takes the stance that institutions 'do matter' which suits the purpose of this research. The research adopts a modified version of the Institutional Analysis and Development (IAD) Framework, developed by the scholars of rational choice institutionalism (Ostrom 1999). The IAD framework was selected for several reasons. First of all, it contains the key elements of the research question including 'institutions' and 'actions' which is suitable for the analysis. Secondly, the IAD framework is based on rational choice institutionalism but it accommodates aspects of other varieties of new institutionalism. Thirdly, it encompasses the horizontal and

vertical dimensions of policy process which allows this study to analyse different levels of architecture. Finally, the flexibility of the framework allows application by various types of institutional analysis and theories (Ostrom 1999: 40).

The original IAD framework was modified in order to suit the purpose of this research, which is to identify institutional influence on NGO coalitions' actions. Understanding and evaluating the outcome of their actions is beyond the scope of this research, thus 'outcome' and 'evaluation criteria' from the original IAD framework are excluded. This research categorizes institutions into three types: formal rules, informal rules and organizations. The analytical framework adopts these categories of institutions as independent variables instead of 'attributes of community' and 'rules-in-use' of the original IAD framework. Finally, the framework includes three levels in its institutional analysis: regional level, national level, and operational level. The analytical framework is illustrated in Figure 1. The next section discusses the application of this framework in the case studies from the Mekong river.

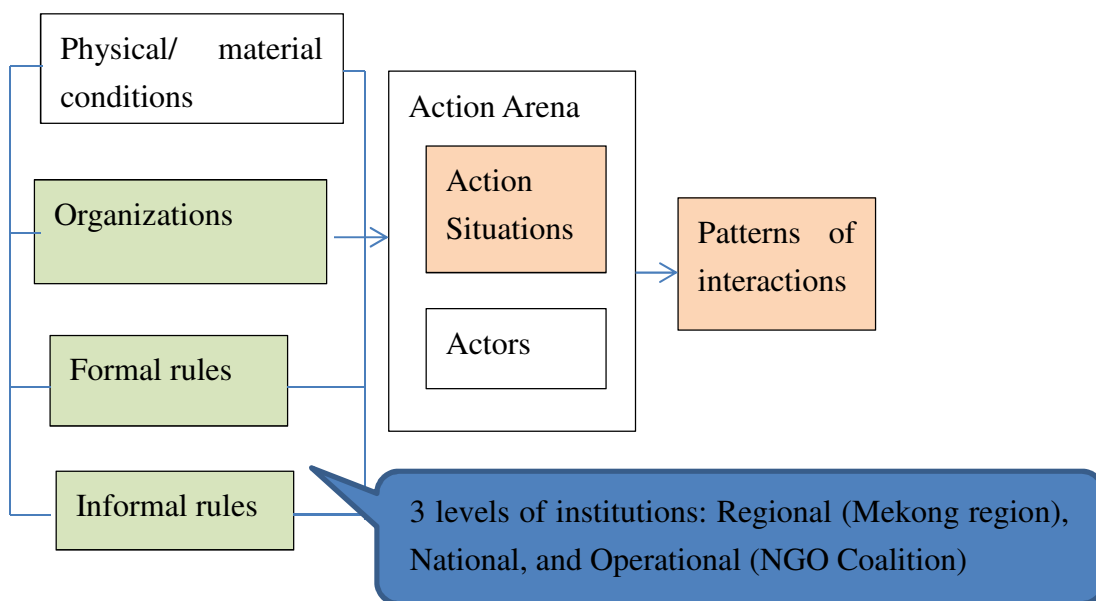


Figure 1: Analytical Framework Source: Modified from Ostrom 1999:42

3. Xayaburi hydropower dam and PNPCA

The Mekong river is the longest river in Southeast Asia, which originates in China and flows through Myanmar, Lao PDR, Thailand and Cambodia before reaching the Mekong delta in Vietnam. The river provides an important source of livelihoods for the riparian population (Mekong River Commission 2010: 3). The total value of fisheries from the Mekong is estimated at 3.9-7.0 billion USD annually (Mekong River Commission 2010: 13). Agriculture in the Lower Mekong basin is another important source of livelihoods totalling up to 10 million hectares for rice production (Mekong River Commission 2010: 8). Fertile soil from the Mekong and irrigation play an important role in the agriculture in the Lower Mekong basin, and millions of people rely on its ecosystem for subsistence (Mekong River Commission 2010: 8-9)

The river faces development pressure which potentially threatens important resources for people's livelihoods. As of 2010, there are 71 hydropower dam projects expected to be operational by 2030 on the Mekong's tributaries, plus 12 new hydropower dams planned on the mainstream. While these hydropower projects are expected to bring 3.8 billion USD of export revenue to Lao PDR and Cambodia, the two poorer nations in the region, it will significantly impact the livelihoods of the local population who are dependent on fish from the river and riparian agriculture, accounting for 30% of the national protein supply (ICEM 2010a: 10-11). The detailed impacts from building mainstream hydropower dams are not fully known. However, the seriousness of mainstream dam impacts are reflected on the Strategic Environmental Assessment (SEA) of the 12 hydropower dams planned on the Mekong's mainstream, which was commissioned by the MRC, and it recommends riparian countries to defer the decision

for dam building by 10 years while detailed studies on the impacts will be undertaken (ICEM 2010b).

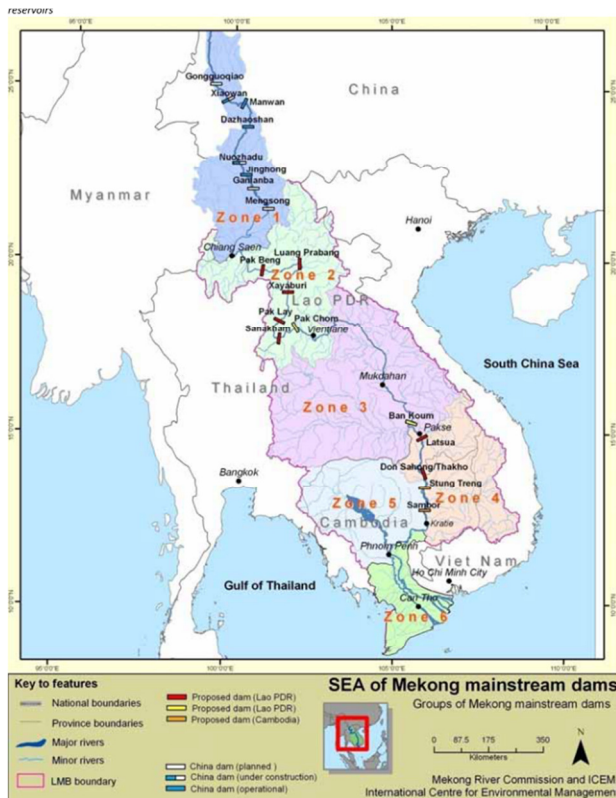


Figure 2: Mekong river and mainstream dams Source: (ICEM 2010a: 13)

In September 2010, the government of Lao PDR officially notified the MRC of its intention to build Xayaburi hydropower dam, which is one of the 12 dams planned on the mainstream of the lower Mekong river basin (Mekong River Commission 2011d). This notification triggered the Procedure for Notification, Prior Consultation and Agreement (PNPCA) process. The PNPCA is one of the procedural rules under the Agreement on the cooperation for the Sustainable Development of the Mekong River Basin (1995 Mekong Agreement). The Agreement was signed by four lower Mekong riparian countries including Cambodia, Thailand, Lao PDR and Vietnam in 1995 (1995

Mekong Agreement 1995). Two upper Mekong riparian countries, China and Myanmar, did not take part in this agreement. One of the key principles of this agreement is equitable and reasonable utilization of the river water described in Article 5 (*Article 5 1995 Mekong Agreement* 1995). Article 5 provides the basis for the PNPCA which requires the member state to ‘notify’ and ‘consult’ with other member states when developing a project requiring inter or intra basin diversion of the river water depending on the season (*Article 5 1995 Mekong Agreement* 1995). The 1995 Mekong Agreement was also a basis to establish the MRC which is the institutional framework for the cooperation of management of the Mekong river (*Chapter IV 1995 Mekong Agreement* 1995).

The PNPCA process officially started in October 2010 when the MRC established the PNPCA working group composed of the representatives from each government. The MRC also conducted the technical review of the Xayaburi hydropower dam project (Mekong River Commission 2011c). The National Mekong Committees of Cambodia, Thailand and Vietnam organized two to three public consultations each, for their respective stakeholders. In April 2011, which was at the end of the initial six months of the PNPCA, the Joint Committee was unable to reach an agreement on the Xayaburi dam deferring the decision to the ministerial level (Mekong River Commission 2011a). At the time of writing this paper (November 2012), the riparian countries have not yet reached a consensus on this hydropower dam. However, the Lao PDR made its own conclusion that the PNPCA process was completed and that it had already addressed the concerns by other riparian governments, thus starting the construction of the Xayaburi dam (Roughneen 2012; Vandenbrink 2012a; Herbertson 2012; Phomsoupha 2011).

The Xayaburi hydropower dam project was the first project to trigger the

consultation process that used the PNPCA process since the 1995 Mekong Agreement was signed. Thus the process is in some senses, a learning experience for all parties involved. One of the problems encountered was the different interpretations of the PNPCA requirement. The Mekong Agreement requires that the consultation ‘aims at arriving at an agreement by the Joint Committee (Article 5 *1995 Mekong Agreement* 1995)’. This ambiguity of what the consultation needs to achieve resulted in Lao PDR to take its own interpretation in fulfilling the legal requirement and start constructing the dam, while other member states demanded for more detailed studies before the construction (Government of Lao PDR and Poyry 2011; Vandenbrink 2012b; Narin and Chen 2012).

Another problem was the lack of transparency in the process and of public engagement. While official consultations were conducted in Cambodia, Vietnam and Thailand, the consultations were criticized by civil society as they lacked enough time, information and participants (R9 2011; R2 2011; V2 2012; C5 2011). In Lao PDR the public consultation did not take place during the PNPCA as a series of public consultation activities took place as part of Social Impact Assessment between 2007 and 2010 (Mekong River Commission 2011b: 2). However, these consultations took place before the SEA of the mainstream hydropower dam was finalized, thus the consulted stakeholders in Lao PDR did not receive the same level of information compared to those who were consulted in other three riparian countries.

4. NGO coalitions in Cambodia and Vietnam

During the PNPCA process, a variety of NGOs including international, national, grassroots organizations, as well as academics have voiced their concerns over the

Xayaburi hydropower dam. This research compares NGOs' activities in Cambodia and Vietnam, particularly comparing coalitions of NGOs that were actively engaged in the Xayaburi advocacy activities during the PNPCA process. In Cambodia, the Rivers Coalition in Cambodia (RCC) is studied as a case and, in Vietnam, the Vietnam River's Network (VRN) is studied. This paper discusses preliminary findings from the author's field work as the research is on-going at the time of writing this paper. The period of field study on NGO coalitions' action spanned 2 years starting from September 2010, when the Lao government officially announced its intention to build the Xayaburi dam until August 2012, two years after the initiation of the PNPCA process.

4.1 Rivers Coalition in Cambodia (RCC)

The RCC is a coalition of national NGOs that are concerned about the negative impacts from hydropower dams on communities in Cambodia. The coalition originally focused its work on the Sesan, the Sekong and the Srepok rivers, tributaries of the Mekong. However, it expanded its membership and the scope of its work to the whole of Cambodia in 2005 (Rivers Coalition in Cambodia undated). As of 2011, the coalition has 28 NGOs as its members including advocacy NGOs, human rights NGOs, environmental NGOs and rural development NGOs.

The RCC conducted various activities during the PNPCA process of the Xayaburi hydropower dam. As activities targeting regional actors, the RCC's main activities were to co-sign letters drafted by the Save the Mekong coalition, the regional coalition of NGOs concerned about the hydropower dams on the Mekong river. The letters were addressed to the MRC and the governments of four countries requesting the clarification of the PNPCA process, promotion of the public participation in the process, and

requesting the government to respect the 1995 Mekong Agreement (Save the Mekong 2012, 2011, 2010).

At the national level, the RCC participated in the official public consultation organized by the Cambodian National Mekong Committee (CNMC) as part of PNPCA process. The RCC was successful in conducting a side meeting with the government officials during one of the consultations where it was able to confirm its alignment with the government position towards the Xayaburi dam (C5 2012; C29 2012). Another activity at the national level involved holding public forums targeting a wide range of stakeholders including the government, communities, students and general public. At the community level, two main types of activities were undertaken by the RCC. One of them was to collect thumb prints for the petition letter requesting the cancellation of the Xayaburi dam (The NGO Forum on Cambodia 2012). Another type of activity involved a series of community awareness raising events, particularly at the communities along the Mekong who will be directly impacted by the Xayaburi hydropower dam. Events were held primarily in provincial towns and districts in Kratie, Stung Treng, and Kompong Cham provinces along the mainstream of the Mekong river, downstream of the Xayaburi hydropower dam (The NGO Forum on Cambodia 2012; C3 2012; C9 2012; C12 2012; C13 2012).

Several institutional factors influenced the RCC's activities. The regional level of formal rules that influenced the RCC's activities were provided by the 1995 Mekong Agreement and the PNPCA. While many interviewees indicated that the PNPCA process re-emphasized that the MRC is 'toothless' as Lao PDR proceeded with its construction of the Xayaburi dam without clear consensus among the member states, they also acknowledged the fact these regional formal rules created official time and

space for NGOs to deliberate (C5 2012; C22 2012; C14 2012). Another important formal rule was the terms of reference (ToR) of the RCC that defined the way the RCC members could make decisions which is a consensus base (Rivers Coalition in Cambodia undated). As the RCC members followed this formal rule at its operational level, sometimes it was unable to provide the coalition's signature on some of the letters sent to regional decision-makers, resulting in some member NGOs to individually sign the letter (Save the Mekong 2011, 2012).

At the national level, the influence of an informal rule superseded the power of formal rules affecting the NGO coalitions' actions particularly at the local level. The key informal rule which influenced the RCC's operation was the unofficial pressure not to speak up against the government authorities (C12 2012; C13 2012; C15 2012; C16 2012). This informal rule is widely spread in Cambodia preventing people from freely speaking and expressing their opinions, hindering Cambodians from exercising their rights guaranteed in the Cambodian Constitution (Article 41 *The Constitution of the Kingdom of Cambodia* 1993; Freedom House 2012). While conducting community level activities related to the Xayaburi dam, both NGO staff and members of the communities faced resistance from local authorities in conducting the activities (C12 2012; C13 2012). This informal rule is associated with the way the current ruling party in Cambodia enhanced its power through the use of traditional patrimonial culture in Cambodia (Un 2006: 228; McCargo 2005: 109; Pak et al. 2007).

Organizations influenced the RCC's activities at various levels. First of all, organizations at the regional level such as Save the Mekong and the International Rivers have historical relationships with the RCC, as these regional organizations have in the past fostered capacity building within the RCC on advocacy work (C28 2012; C11

2012; R10 2011). The personal relationships among NGO members engaged in the hydropower dam advocacy throughout the Mekong region appears to be strong due to various interventions and support by regional and international programs which facilitated the exchange, such as the Mekong school organized by the Earth Rights International and the Southeast Asia Rivers Network (SEARIN) supported by international NGOs such as the International Rivers and Oxfam America (Earth Rights International undated; Living River Siam undated; C11 2012; C14 2012).

Another important organizational influence was the RCC's member NGOs. Most of the RCC NGOs based in the provinces implement projects that engage communities, such as rural development and natural resources management. This on-going relationship with the community facilitated the RCC members' engagement with community members in Xayaburi advocacy activities such as thumb print collection and community awareness events.

4.2 Vietnam Rivers Network (VRN)

The Vietnam Rivers Network (VRN) was established in 2005 as an open forum of members concerned with the river's protection and sustainable development in Vietnam (Vietnam Rivers Network 2009: 4). The network was initially hosted by the Institute of Ecological Economy (Eco-Eco); however, in 2007 the role of host was transferred to the Centre for Water Resources Conservation and Development (WARECOD) which is a Vietnamese NGO (TERRA 2008: 32). In comparison to the RCC whose membership only consists of NGOs, the VRN is comprised of both individual and NGO members. As of November 2012, the network involved approximately 300 members, the majority of whom are individuals who are researchers, academics, government officials,

members of staff from NGOs and members of local communities (Vietnam Rivers Network 2009: 4; 2012).

The VRN's activities relating to the Xayaburi dam was primarily conducted by the Mekong Task Force within the VRN. The Mekong Task Force was a small group of individuals including staff from WARECOD based in Hanoi, retired government officials, and scientists who have been studying about ecosystem and agriculture in the Mekong delta for decades (V2 2012; V18 2012; V16 2012). Some of the scientists were not officially members of the VRN; but they contributed to the VRN's Xayaburi dam advocacy work as they shared concerns for the Mekong and its people, and had expertise to contribute to the VRN's initiative (V16 2012). All the decisions relating to the VRN's initiatives on Xayaburi hydropower dam were made within the Mekong Task Force, allowing the network to have swift decision-making on their actions (V2 2012)..

The main activities of the VRN during the Xayaburi PNPCA focused on targeting the Vietnamese decision-makers. The VRN held workshops targeting the National Assembly members, scientists, and media (V2 2012; V10 2012). It also sent petition letters to senior politicians including the Prime Minister (WARECOD 2011). One of the strategies used by the VRN members included the use of science and the media. Through decades of research work within the Delta, scientists within the Mekong Task Force had deep scientific knowledge on the Mekong Delta's ecosystem and agriculture activities, and the potential impacts from the activities undertaken by the Mekong river's upstream on the Mekong delta (V17 2012). Their knowledge was communicated to the decision-makers through various channels including a number of individual meetings with key decision-makers, government offices and departments (V2 2012). The science-based advocacy was helpful in gaining VRN's credibility with the

decision-makers. As a result, one of the members of the VRN's Mekong Task Force was invited to join the Vietnamese government delegation during the bilateral discussion between Vietnamese and Lao government on the Xayaburi hydropower dam which took place in 2011 (V16 2011).

The VRN also used media as a means to disseminate information on the Xayaburi hydropower dam. The VRN members provided information on the Xayaburi dam to the media, and at times wrote articles in the media (V9 2012; V16 2011). In addition, the VRN invited journalists to various workshops they conducted on the Xayaburi and other hydropower dams on the Mekong (V10 2012). The VRN's efforts to engage journalists faced barriers at times, partly as a result of political interference with media through informal rules. At the national level, informal guidelines from the Communist Party on media influenced the way media was able to discuss the issues about Xayaburi hydropower dam. The formal rules in Vietnam such as the Constitution and the Law on Freedom of Press guarantee freedom of expression by Vietnamese citizens (Article 69 *Constitution of Vietnam* 2001; Rieu-Clarke and Allan 2008: 26). However, the penal code includes vaguely worded terminology which prohibits freedom of speech and journalism that significantly infringe on the interest of the State (Article 258 *Penal code* 1999; Freedom House 2011). According to the author's interviews with Vietnamese journalists, the Ministry of Information and Communication and the Communist Party's Central Committee Commission on Popularization and Education conduct regular meetings with newspaper editors informing them on what cannot be written in the Vietnamese press (V9 2012; V19 2012). Editors-in-chief are held responsible if a newspaper violates the order or crosses the 'party-line' which is deemed acceptable by the Vietnamese Communist Party (Matsumoto 1999: 126; V9 2012; V19

2012). In the case of the Xayaburi hydropower dam, shortly after the MRC Joint Committee meeting in April 2011 when four member states could not reach consensus on the Xayaburi dam, journalists were forbidden to write about the Xayaburi dam, as the Vietnamese government did not want to raise any tension with its counterpart in Lao PDR (V19 2012; V9 2012). This media ban on the Xayaburi hydropower dam influenced the VRN who used media as one of the means to disseminate the information on the Xayaburi dam and to raise public awareness on the issue (V2 2012). When the VRN members conducted workshops or events on the Xayaburi dam and invited journalists, or wrote articles on the Xayaburi dam and sent to media for publication, the media was often not able to publish the information related to the Xayaburi dam while there was an embargo for the press (V2 2012; V16 2012; V19 2012).

Organizations also influenced the VRN's activities, particularly at the national level. The Vietnam Union for Science and Technology Associations (VUSTA) has a mandate to provide scientific advice to the Party and the State on policies related to national development (Article 6 *VUSTA Charter* 2010; V7 2012). With this mandate, the VUSTA played a role in providing independent and scientific opinions to the Prime Minister and other government offices on Xayaburi hydropower dam (V7 2012). As the WARECOD, which hosted the VRN, was registered under the VUSTA as one of its associations, the VUSTA became one of the key official channels for the VRN to provide scientific inputs to the decision-makers. The VUSTA and the VRN jointly organized workshops on the Xayaburi dam, aiming to raise awareness, understandings and discussions among scientists, government officials and the media (V2 2012; V10 2012).

The Vietnam National Mekong Committee (VNMC) was another important

political channel for the VRN. As one of the members of the Mekong task force was a former high ranking officials from the VNMC, the network was in a good position to have direct contacts and discussions with the VNMC, which is the national focal point institution for all the Mekong river related issues within Vietnam (*Decision on powers and functions of VNMC* 1995).

Finally, informal rules at an operational level also played important roles in VRN's activities. In particular, the working culture of the VRN, which is driven by individuals motivated to work on certain issues, allowed the VRN to conduct a wide range of advocacy work with just a handful of individuals (V2 2012; V5 2012; V16 2012). The VRN's working style provided freedom for the Mekong Task Force to determine strategies and activities related to the VRN's Xayaburi dam advocacy. This informal style of decision-making allowed the Mekong Task Force members to closely work together and make decisions on important issues swiftly (V2 2012; V16 2012).

5. Conclusion

This research analyzed the influence of institutions on NGO coalitions' actions. The analytical framework was developed through modifying the Institutional Analysis and Development framework developed by the scholars of rational choice institutionalism (Ostrom 1999). The research then used two case studies on the advocacy work of coalitions of national NGOs towards the Xayaburi hydropower dam on the Mekong river basin: the Vietnam Rivers Network and the Rivers Coalition in Cambodia. The two case studies on the same hydropower dam were chosen as a way to highlight the differences which may arise as a result of different institutional contexts within which these coalitions operated.

The preliminary findings from the author's field work revealed several institutional influences commonly found in both case studies. In both Vietnam and Cambodia, the regional formal rules governing the Mekong , the 1995 Mekong Agreement and the PNPCA, were found to be 'toothless'; however, they created time and space for NGO coalitions to deliberate and built momentum. At the national level, the influence of informal rules superseded the formal rules, in particular related to the freedom of speech and expression. This situation is shared within the political context of the two countries. Vietnam is a communist country with one party rule, whereas Cambodia adopts a democratic regime, but in reality one party dominates and rules the country (McCargo 2005; Pak et al. 2007; Un 2005). At the operational level, the member composition of the NGO coalition and the formal and informal rules of operation have all contributed to shaping the NGO coalitions' activities.

Activities in Vietnam had a particular focus on targeting decision-makers, scientists and media. The VRN's legal status, which is a project of one of the Vietnamese NGOs registered under the VUSTA, provided an opportunity for the VRN to access the VUSTA as a pathway to communicate its message to decision-makers. The personal network of the VRN members particularly with the VNMC also created important windows for accessing the decision-makers. The use of scientific information on advocacy was possible with combinations of factors: scientists with deep knowledge on the Mekong delta's ecosystem, the existence of facilitators with access to political channels to bring science into decision-makers, and the Vietnamese culture in respecting the science.

In Cambodia, the RCC had a wide range of activities targeting different types of stakeholders at national and local levels. While reaching out for opportunities to have

direct conversations with the decision-makers, the RCC's main activity involved raising the public awareness on the potential impacts from the Xayaburi dam. In particular engaging the local communities directly to raise their voices through community events and thumb prints collections. The existing relationships of the RCC member NGOs and communities through their regular NGO activities allowed the RCC to conduct these community-level interventions.

The last two sections of this paper discussed the preliminary findings from the field work. The analyses of two case studies clarified that the institutions indeed influence the way NGO coalitions take their actions. They also revealed the relationship between different institutions, or components of governance architecture, and how actors interact within the architecture. For example, as illustrated in the both case studies, while formal rules supporting freedom of speech and actions, informal rules often supersedes the formal rules shaping the way NGOs can take their actions. The use of certain approaches such as emphasis on science in Vietnam, and close working relationship with communities in Cambodia, are influenced by the nature and characteristics of members and NGOs creating the coalitions. These analyses have identified some of the barriers and opportunities NGO coalitions face. As the analyses of the case studies are currently on-going, further findings will be presented during the conference when this paper will be presented.

***Acknowledgement:** The author would like to thank Prof. Geoffrey Gooch, Dr. Jessica McLean, Dr. Philip Andrews-Speed and Mr. Peter O'Carroll for their comments on the draft version of this paper.*

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