



Large hydropower and legitimacy: A policy regime analysis, applied to Myanmar



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ABSTRACT

Hydropower development in capacity-constrained countries can unfold through unsound policy arguments, narrow institutional and implementing arrangements, and *ad hoc* decision making processes. To derive insights for more legitimate policy making, we provide the first holistic account of Myanmar's legitimation struggles over large hydropower, focusing on Myitsone, the country's most controversial dam, during the period 2003–2011. Our analysis takes a policy regime perspective (specifically, a “political economic regime of provisioning” framework). Among our findings: (1) frequent use of non-rationally persuasive argument among contending actors; (2) a spiral of declining policy legitimacy, which is amplified by civil society mobilization, and halted by a 2011 decision to suspend Myitsone; (3) rejection of Myitsone but conditional acceptance of large hydropower among some elements of civil society. Opportunity and capability for more technically informed, inclusive discussion exists in Myanmar, but given hydropower's complexities, urgently deserves to be augmented. Although Myitsone in Myanmar is an exceptional case, we offer three propositions to assess and improve policy legitimacy of hydropower.

1. Introduction

How do developing countries legitimate large-scale energy infrastructure development? We engage with the above research question and profound governance challenge by exploring struggles over the legitimacy of a gigawatt-scale hydropower project in Myanmar, a least-developed country torn by decades of authoritarian rule and civil war. Since 2000, a number of generalized governance frameworks and guidelines have emerged which claim relevance to the hydropower sector. All emphasize legitimated development (e.g. [Mekong River Commission et al., 2010](#); [Natural Resources Governance Institute, 2014](#); [World Commission on Dams, 2000](#)). The most prominent of this normative governance literature is the [WCD \(2000\)](#), which considered “gaining public acceptance” as the first of its seven strategic priorities. WCD conceptualized public acceptance as an *outcome* of equitable decision making *processes*. Such processes include informed participation of involuntary risk-bearers, and agreements negotiated via accountable practices (2000: 215–220). Legitimate outcomes include fair benefit sharing, and sustained rivers and livelihoods ([WCD, 2000](#): 234–243;

[Dore and Lebel, 2010](#)).

The legitimation of large energy projects has been difficult to achieve. The implied standards of governance demand a level of capability and responsiveness which many states do not have. Existing socio-political divisions may exacerbate unaccountable decision making. In poor developing countries the gap between governance principles and socio-political reality can be significant. The [WCD \(2000\)](#) and related governance literature does not adequately deal with the question we raise, namely how, in specific low-capacity developing country contexts, “public acceptance” is to be improved.

Answering the question of how developing countries legitimate large-scale energy infrastructure demands analysis of policy formation and implementation in specific settings. We focus on the case of Myitsone Dam in Myanmar's northernmost Kachin State (named after the area's predominant ethnic Kachin people) during 2003–2011. Myanmar's 2011 suspension of this contested \$US3.6 billion energy project was unprecedented ([Zhu et al., 2016](#)). Academic accounts focus on various facets relevant to legitimation, for example: activism ([Simpson, 2013, 2014](#)); Kachin and Burmese nationalist politics ([Kiik,](#)

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2016b); the role of Chinese energy developers and Sino-Myanmar relations (Lamb and Dao, 2017; Perlez, 2006; Sun, 2012; Yeophantong, 2016a, 2016b), environmental and social safeguard norms (Kirchherr et al., 2016b, 2017), perceptions of environmental risk and elite corruption (Kirchherr et al., 2016a) and the role of expert knowledge in decision making (Zhu et al., 2016). Such analyses illuminate a complex case and its context, while suggesting to us that a holistic analysis of hydropower legitimation challenges is timely.

We offer a holistic account of the energy policy legitimation challenge in Myanmar. Taking a policy regime perspective (Foran et al., 2016; May and Jochim, 2013), we assess socio-technical contexts, policy arguments, institutional arrangements, and dynamics of support and opposition over time related to Myitsone Dam.

Our account enhances the literature in several respects. First, since legitimation is historically- and culturally-structured, we argue that social historical approaches (e.g. Kiik, 2016b) provide essential insights, complementing policy approaches which focus on contemporary governance practices (including social or environmental safeguards approaches). Thus we emphasize, among other dynamics, how Kachin civil society resistance against Myitsone is shaped by prior and ongoing interactions between the military-state and the Kachin Independence Organization (KIO), the quasi-state that has governed large parts of the ethnic Kachin region since the 1960s (Section 7).

Second, a topic of vital relevance to policy legitimation – yet under-explored in the Myitsone literature – is whether a particular project is the *best* energy services development option in a particular context (WCD, 2000). At critical moments, legitimacy may be more influenced by elite argumentation around such questions than historical or contemporary governance practice perspectives necessarily acknowledge. Thus, we analyze how values and optimality are constructed and debated by Myitsone's proponents and opponents, focusing on rational and non-rational persuasiveness.

Third, origins and impacts of civil society mobilization around Myitsone Dam are critical to understand (Chan, 2017; Kiik, 2016b; Kirchherr et al., 2017). Kachin and Burmese nationalisms were key drivers of mobilization which contributed to Myitsone's (de)legitimation (Kiik, 2016b). Decisions not to heavily censor or detain critics facilitated anti-Myitsone opposition to emerge in lowland Myanmar in 2011 (Chan, 2017). Domestic opposition provided a bargaining position for Myanmar to revoke (not revise) an inter-state hydropower agreement (Chan, 2017); it was also a “root cause” for Chinese developers to adopt more rigorous social safeguard norms (Kirchherr et al., 2017: 535). Taking mobilization seriously, we conceptualize it as a process of *interaction* between challengers (e.g. anti-dam networks, armed ethnic organisations) and incumbents. Responding to perceptions of threat or opportunity, incumbents (e.g. state factions, developers, policy advisors) also engage in innovative action, changing structures of opportunity, with contingent outcomes (Chan, 2017; McAdam et al., 2001; Tilly, 1999). Such dynamics make unintended consequences inevitable.

Section 2 introduces the conceptual framework, while Section 3 summarizes methods. Section 4 introduces Myanmar's development context. Sections 5–7 unpack Myanmar's policy regime around large hydropower. Section 8 discusses insights for hydropower policy, and Section 9 concludes.

2. Conceptualizing legitimacy

The concept of state legitimacy essentially refers to evaluations by citizens, expressed through actions and attitudes, that the state is meeting their reasonable interests. State legitimacy encompasses three interacting dimensions (Gilley, 2009):

- legality (i.e. accountability to formalized rules and procedures);
- citizen consent
- moral justification (i.e. the actions of authorities can be justified

because they serve a shared understanding among citizens of the “common good”)

Although moral justification is central, in deeply divided societies such as Myanmar a shared understanding of the common good¹ may not exist, making state legitimacy impossible by definition (cf. Gilley, 2009: 4–5). For us, this means that it is crucial to understand historical processes which enable or impede such shared understanding.

Gilley's (2009) conceptualization resonates with WCD (2000) and subsequent literature on the legitimation of large dams. Dore and Lebel (2010) argue that “gaining public acceptance” is an outcome of a dozen governance processes,² but do not analyze real-world cases of legitimation. We approach legitimation through the concept of “policy regime”: the governing arrangements for addressing a policy problem or issue (May, 2015; May and Jochim, 2013). This approach draws on fundamental concepts such as actors' interests, prevalent discourses, and institutions (Foran, 2006; Hajer, 1995; John, 1998; Lichbach and Zuckerman, 1997). Both interests and discourses drive politics but in a manner shaped by institutions. Discourses (e.g., specific models of economic development) can shape individual preferences. However, such models can be attacked for failing to resonate with an audience's experience, its cultural beliefs, or empirical “facts”. Institutions reproduce legitimating practices yet they can be disrupted if their rationality is challenged often enough and loudly enough by outside actors. Individuals can be threatened or persuaded to conform, but can also engage in collective action (e.g., advocacy networks) (Foran, 2006, 2015).

A “policy regime” consists of a set of core arguments which represents the issue in a particular way; institutional arrangements that channel attention and resources to more or less effectively deal with the issue as defined; and different interest groups which support or oppose the governing arrangements as they unfold over time (May and Jochim, 2013). The concept emphasizes understanding the effectiveness of policy, once formulated, in governing. A legitimate regime achieves synergies between the core policy argument, effective institutional arrangements, net political support, and broad-based empowerment over time (May and Jochim, 2013). From this perspective, policy legitimacy means acceptance by the governed of the core policy arguments and institutional arrangements for resolving problems (May, 2015).

2.1. Political economic regime of provisioning framework

Emphasizing the need for greater critical contextualization, subsequent contributors proposed a “political economic regime of provisioning” (PERP) framework (Foran, 2015; Foran et al., 2016). The framework comprises topics relevant to an analysis of legitimation (Table 1). For example, it emphasizes the importance of natural resource-related capital accumulation, uneven development, and dis- possession as sources of grievances, and hence potential catalysts of contention (Watts, 2012; Webber, 2012; Woods, 2011).

Drawing from science and technology studies, the framework emphasizes the importance of mature technology and existing infrastructure in legitimizing particular conceptions (e.g. a centralized power generation system) of what is essential for energy provisioning (Fullbrook, 2016; Hennig, 2016; Smits, 2016).

Drawing on social movement studies, and critical realist methodology (Mayntz, 2004; Sayer, 1999), the framework treats social mobilization as a potentially robust social process – that is, a process whose internal mechanisms may be discerned across disparate social contexts, including extreme contexts such as Myanmar (McAdam et al.,

¹ Defined as a citizen's own fair share of the gains from social cooperation, as well as the reasonable demands of fellow citizens (Gilley, 2009).

² These processes map to dimensions of governance such as: representation, distribution of authority, institutional capacity, and downward accountability (Ratner et al., 2013).

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