



DISSERTATION BRIEF SERIES 2016:01

**GOING WITH THE FLOW OR SWIMMING AGAINST THE
CURRENT?**

**INTERPLAY OF FORMAL RULES, INFORMAL NORMS AND NGO
ADVOCACY STRATEGIES**

Yumiko Yasuda

*Going with the flow or swimming against the current?
Interplay of formal rules, informal norms and NGO advocacy strategies*

Yumiko Yasuda

Yumiko Yasuda is a postdoctoral researcher at the Hague Institute for Global Justice, and the International Centre for Water Cooperation (under the auspices of UNESCO) established by the Stockholm International Water Institute and the Uppsala University. She defended her dissertation "Going with the flow or swimming against the current? The influence of rules and norms on advocacy strategies of NGO coalitions along the Mekong River", at the University of Dundee in February 2014. The thesis has been edited into a book: Yasuda, Y. (2015), *Rules, Norms and NGO Advocacy Strategies: Hydropower Development on the Mekong River*. Earthscan Studies in water Resources Management series. London and New York, Routledge Taylor & Francis Group. Her e-mail is yumiko.yasuda@siwi.org.

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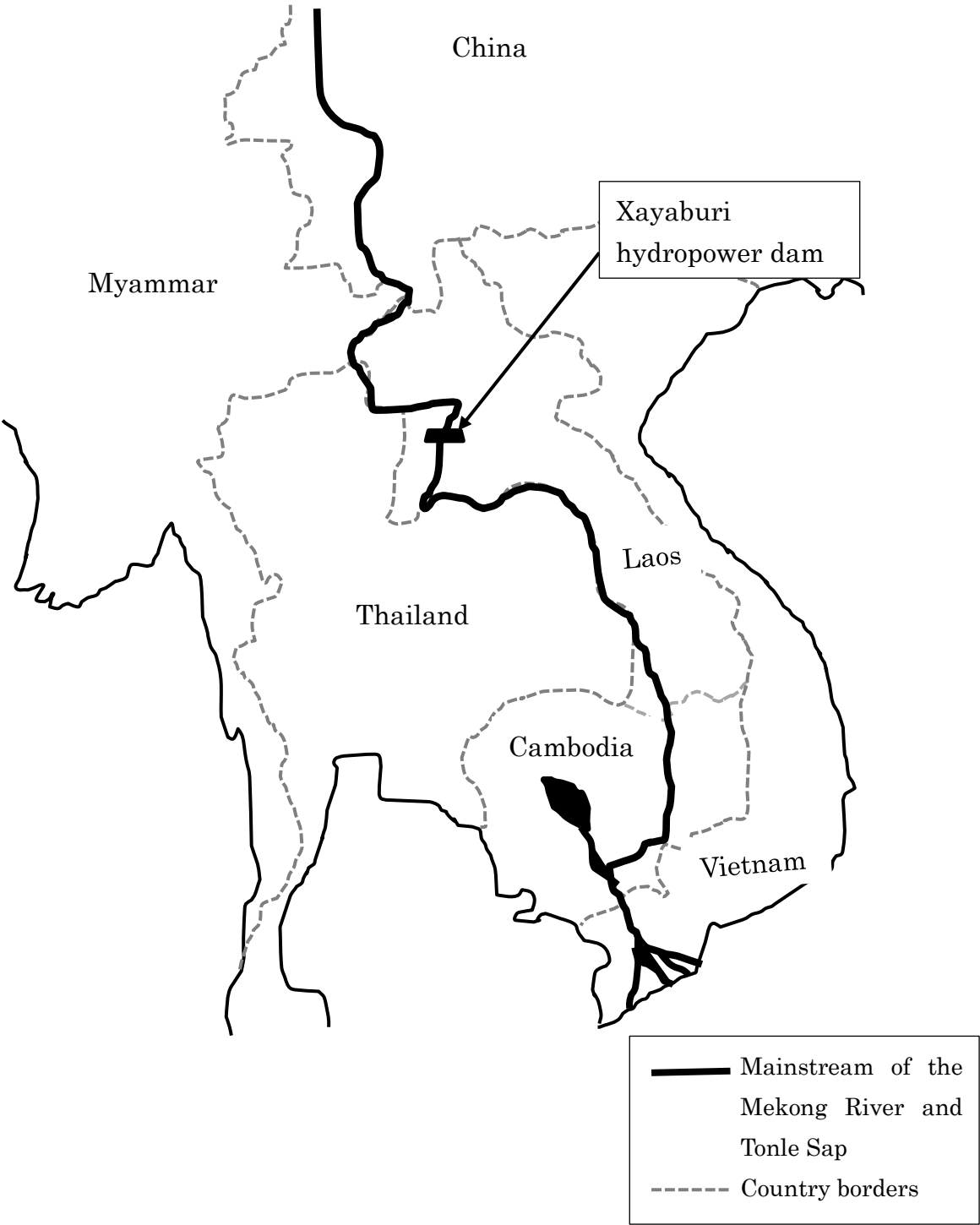
Key messages

- Currently, citizens face certain barriers to their full participation in the governance of transboundary waters, particularly on activities which take place beyond their national borders. Principles from existing international law on participation (such as the Aarhus Convention) could be integrated into existing agreements on transnational natural resources in order to improve participation and governance.
- Formal and informal rules and norms interact with each other and influence advocacy strategies of NGOs. These interactions are at times complementary and at other times, contradictory. Actors such as authorities and NGOs play important roles in determining the nature of this interaction.
- The analytical framework developed through this study can provide useful tools for NGOs and civil society members developing advocacy strategies.

Introduction

Nongovernmental organizations (NGOs) have increasingly become important agents in environmental governance (Florini and Simmons, 2000, Betsill and Corell, 2008). These groups often represent stakeholders dependent on the direct use of natural resources who are impacted by changes in resource use due to economic development (Bruch, 2005). Engagement of civil society is a key aspect of water governance, and rules and norms can shape this engagement (Bruch, 2005). Many studies discuss the way civil society actors attempt to influence rules and norms (Betsill and Corell, 2008, Finnemore and Sikkink, 1998, Brown et al., 2000). There is limited research, however, that examines how rules and norms affect the behavior of civil society actors (Ho and Edmonds, 2008, Brinkerhoff, 1999, Brown et al., 2000, Bryant, 2001). This research brief introduces key findings from broader research that aimed at understanding the influence of formal and informal rules and norms on civil society actors.

Figure 1. Location of the Xayaburi hydropower dam (Yasuda, 2015)



Why focus on the Mekong and the Xayaburi dam?

In order to identify how formal and informal rules and norms influence advocacy strategies of NGOs, two NGO coalitions operating within the Mekong River Basin were studied. The Mekong River is the longest river in Southeast Asia, flowing through six countries. Four Lower Mekong Countries (Laos, Thailand, Cambodia and Vietnam), signed the Agreement on Cooperation for the Sustainable Development of the Mekong River in 1995, establishing the Mekong River Commission (MRC) as its institutional mechanism. Following this agreement, in September 2010, Lao government expressed its intention to build the Xayaburi hydropower dam, instigating a prior consultation process among the MRC member countries. The consultation process (referred to as the 'PNPCA' process) has not resulted in a clear agreement among the member countries to date. Instead, a transboundary impact assessment has been suggested. Despite the lack of accord amongst member countries, Laos commenced the construction of the dam, officially launching the construction in November 2012.

During the PNPCA process, a number of NGOs and individuals attempted to influence states' decision-making processes. Did formal rules such as national laws and the Mekong Agreement make a difference to strategies adopted by NGOs? Was there any influence of informal rules and norms such as local taboos or culture? This research aims to answer these questions in order to identify opportunities and barriers NGOs face in their engagement to participate in the governance of a transboundary river.

Research methodology

As a way to answer these questions, advocacy strategies of Rivers Coalition in Cambodia (RCC) and the Vietnam Rivers Network (VRN) were compared. These NGO coalitions were selected as they are both active on the same issue but operating within the context of different formal and informal rules and norms, based on the distinctive geographical locations. This comparison aimed to highlight the influence of such differences.

The research used four types of data and triangulated them. They included: a) semi-structured interviews¹ to seventy two informants, b) field observations of eight meetings

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associated with NGOs within the Mekong region, c) desktop research and d) literature review. Data were analyzed using grounded theory approach, which involves careful readings of interview data and identifying recurring themes indicating relationships between rules, norms and advocacy strategies of NGO coalitions. Framework that facilitates the analysis was developed based on the Institutional Analysis and Development framework developed by the scholars of new institutionalism. Figure 3-5 illustrates the application of the framework.

Key findings

NGO coalitions adopted a wide range of advocacy strategies

As illustrated in Figure 2, a wide range of advocacy strategies were adopted including: letter writing, formal and informal meetings with decision-makers and influential individuals, awareness-raising workshops, the use of science, and the use of media.

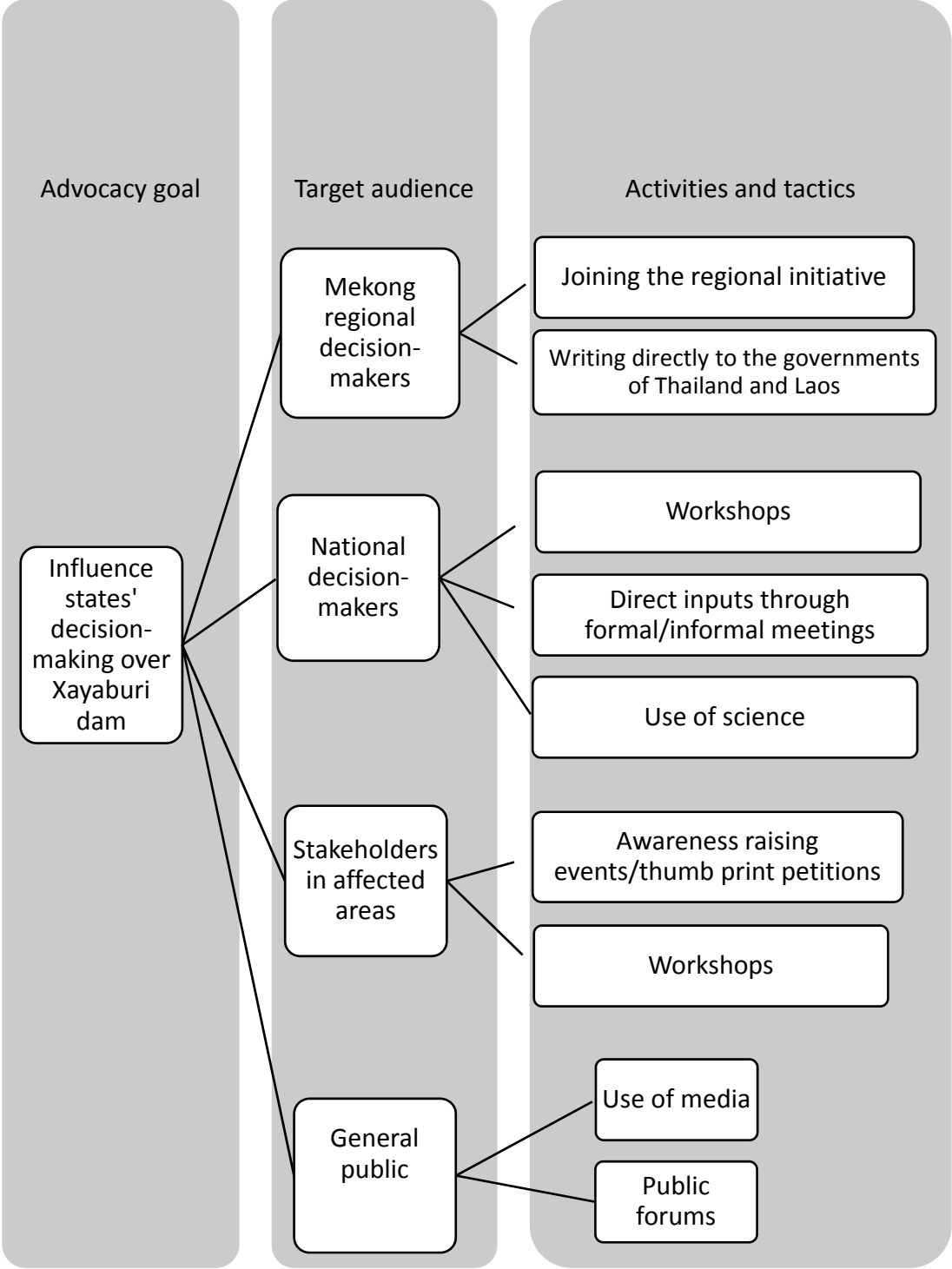
Formal and informal rules and norms influenced advocacy strategies in a variety of ways. A number of examples illustrate such influence:

Example 1: Community awareness-raising activities

Informal pressure played an important role in influencing advocacy strategies for communities in Cambodia. The RCC conducted a variety of awareness-raising activities with communities that faced potential impact from the Xayaburi hydropower dam. While conducting these activities, some RCC and community members faced informal pressure from local authorities, not to advocate against the development of hydropower dams. The informal pressure resulted in the RCC modifying the way it conducted some of its advocacy activities. This informal pressure is related to a general fear of speaking up against authorities in Cambodia. This fear arises from the combination of formal and informal rules that exist in Cambodian society. The majority of Cambodians believe in Theravada Buddhism, under which people who have gained higher social status are generally believed to have done good deeds in past lives, thus contributing to the Khmer citizen's general acceptance of the current power relationship between 'rulers' and 'ruled' (Rotha and Vannarith, 2008, Pak et al., 2007). In addition, neo-patrimonialism used by the ruling political party created a patronage system to incentivize communities to

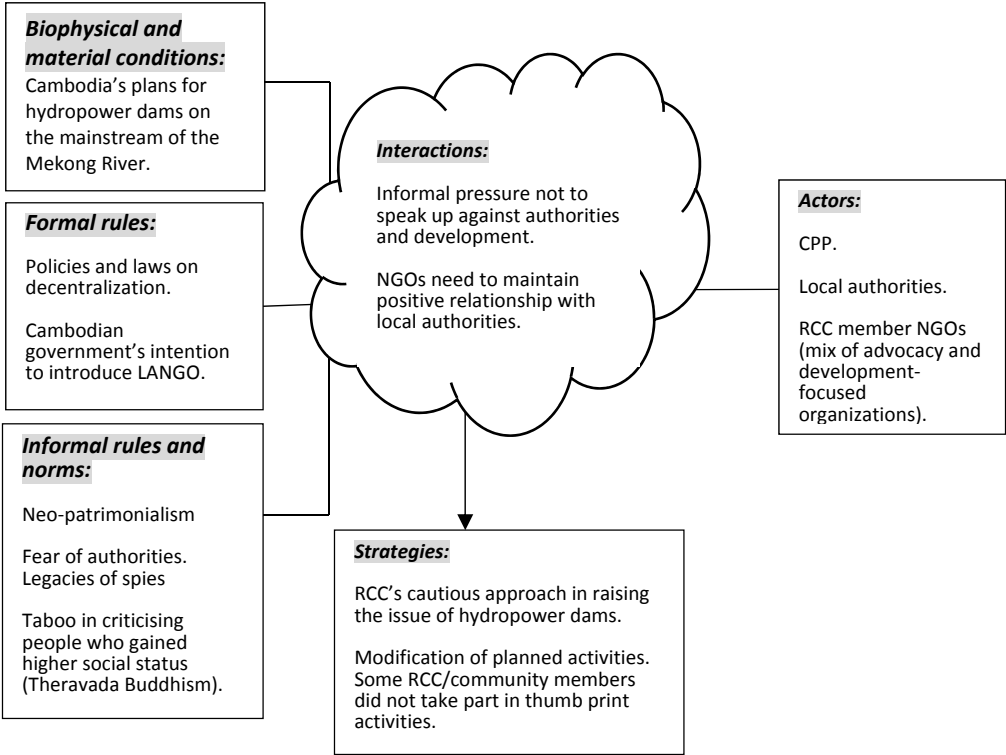
support the ruling party and to punish communities that do not, contributing to the creation of 'fear' of authorities amongst the public (Hughes, 2009, Un, 2011, C20, 2012).

Figure 2. Overview of advocacy strategies adopted by two NGO coalitions studied (Yasuda, 2015)



This tendency was particularly enhanced through formal rules and policies promoting decentralization in Cambodia, as gaining political power at the local level is considered important in order to maintain political power at the central level (Öjendal and Sedara, 2006). For some of the RCC members operating in rural areas, maintaining positive relationships with local authorities was important for smooth operation of their rural development initiatives. The interaction of formal and informal rules and norms created a situation where these members were susceptible to informal pressures from local authorities. This influence is illustrated in Figure 3.

Figure 3. The influence of formal and informal rules and norms on the RCC's strategy in raising the issue of hydropower dams with the authorities (Yasuda, 2015)



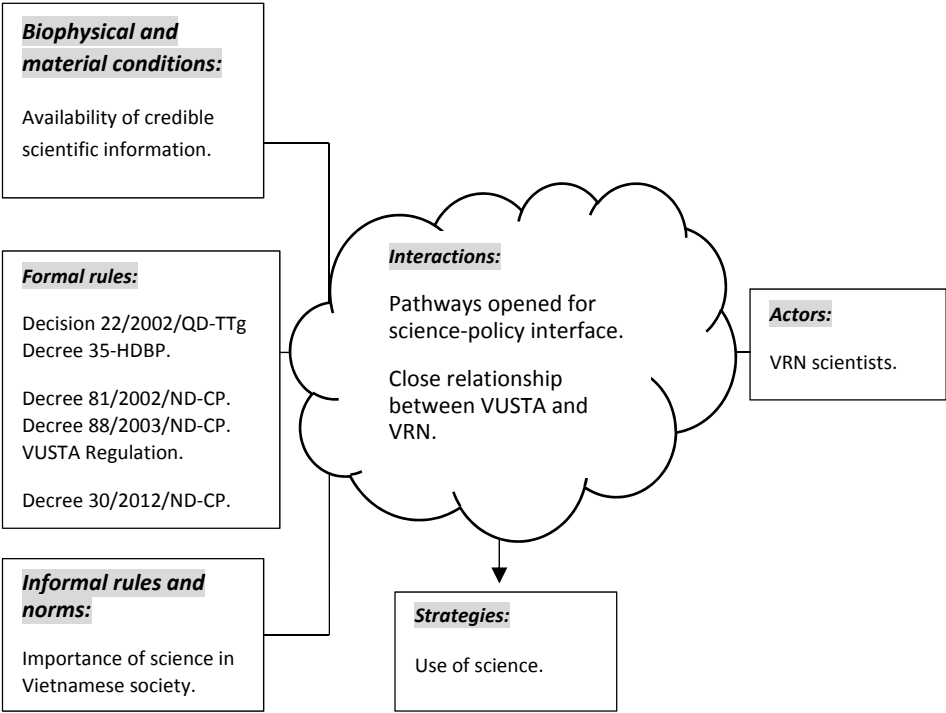
Example 2: Use of science

In Vietnam, formal rules created a pathway for a science-policy interface. Use of science was one of the key strategies adopted by the VRN (V2, 2012, V16, 2012). A group of scientists from the Mekong Delta, who were also members of the VRN, provided substantive inputs in explaining potential impacts of the Xayaburi dam on Vietnam and,

in this way, played an important role in the VRN’s science strategy. Members of the VRN conducted workshops with National Assembly members, other government officials, scientists and community members to explain potential impacts of the Xayaburi dam. At times, these workshops were co-organized with the Vietnam Union of Science and Technology Association (VUSTA), which is the socio-political organization of Vietnamese intellectuals and scientists (2012).

The VRN was able to collaborate effectively with VUSTA partly because the NGO that hosts the VRN is registered as a scientific organization under the umbrella of VUSTA. Thus, the VRN is considered as a ‘member association’ of VUSTA. Working with VUSTA provided the VRN access to the government, as the Prime Minister’s decision 22/2002/QD-TTg gives VUSTA a mandate to critically review governmental policy from a scientific point of view. In addition, the Vietnamese cultural tradition of respecting science was considered an important factor that also supported the VRN’s science strategy (V11, 2012, V16, 2012). In conducting the VRN’s science strategy, these formal and informal rules and norms complemented each other, creating pathways for a science-policy interface. Figure 4 illustrates this interaction.

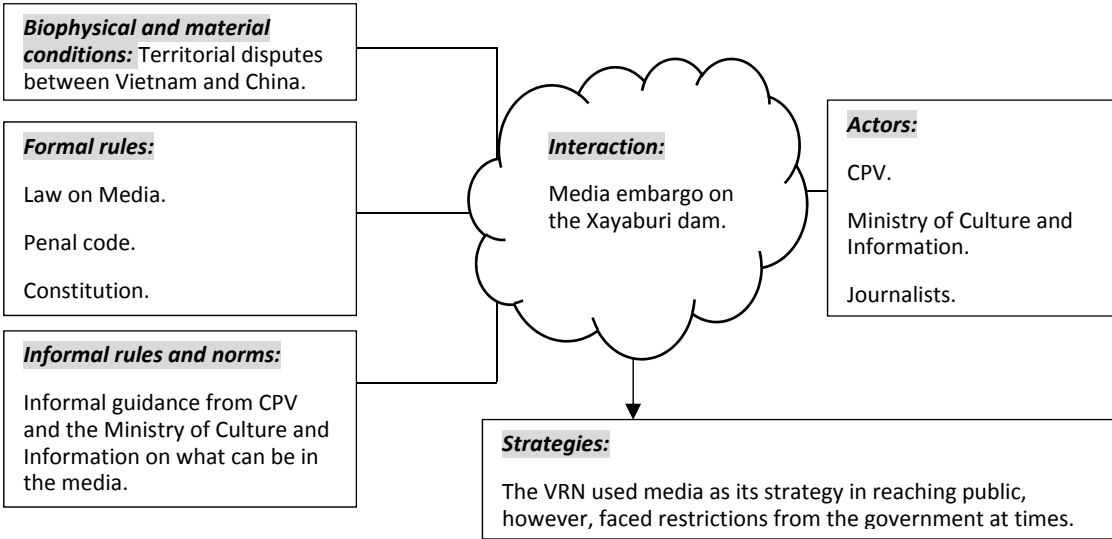
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Example 3: Use of Media

In Vietnam, the VRN’s strategy of using media to raise public awareness was affected by a media embargo placed at times by the authorities. For example, the VRN conducted media-targeted workshops, invited journalists to field visits in the Mekong Delta and provided them with information about the Xayaburi dam, both directly and through media releases. Despite these efforts, Vietnamese media were prohibited from writing about the Xayaburi dam at certain times, resulting in limited press coverage. Interviewees commented that this was due to the fact that the Vietnamese government was concerned about maintaining positive relations with Laos in order to gain political support over its territorial dispute with China, and was wary of publicly offending Laos (V16, 2012, V19, 2012). This restriction on press freedom is associated with the fact that the Vietnamese authorities would regularly give guidance to Vietnamese journalists regarding issues which should not be published (Kerkvliet, 2001, Hayton, 2010). If journalists do not follow the guidance, editors-in-chief could face legal prosecution under formal rules such as the Penal Code and Law on Media which prohibit journalists from reporting on issues which are considered to infringe on Vietnamese national interests (Freedom House, 2011, 1999). These formal and informal rules and norms conflict with the principle of freedom of the media and of speech guaranteed in the Vietnamese Constitution and the Law on Media. Figure 5 illustrates these interactions and their influence on advocacy strategies.

Figure 5. The influence of formal and informal rules and norms on VRN’s media strategy (Yasuda, 2015)



What can we learn from the Xayaburi case?

This research brought three key conclusions. First of all, the research clarified that formal and informal rules and norms interact complementarily at times, and at other times have a competing relationship. As illustrated in Examples 1 (community awareness-raising activities) and 3 (the use of media), formal rules and informal rules were found to have competing relationships with each other in these cases. Actors play important roles in determining these relationships. For NGOs and civil society actors operating in any context, conducting an objective analysis of how formal and informal rules and norms influence their activities would be useful to inform and shape their strategies.

Secondly, the study identified some of the barriers and opportunities facing NGO actors within the Mekong region, at times caused by competing relationships between formal and informal rules and norms. While formal rules are often designed to protect people's rights, informal rules and norms tend to take precedent and create barriers in exercising rights. On the other hand, complementary relationships between formal and informal rules and norms tend to assist NGO actors in strategy implementation. The second example, looking at the use of science in advocacy by the VRN, is a good illustration of this positive relationship. Another barrier identified is the lack of pathways to engage and influence decision-making over transboundary water management under the Mekong Agreement. This barrier could be turned into an opportunity in the future, if there is political will in all member countries to change this rule to further integrate more participation principles into the Agreement. Existing international agreements can play key roles in integrating such principles. For example, The UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) allows the public to 'participate in decision-making and to have access to justice in environmental matters regardless of their citizenship or locations' (Article 3 Aarhus Convention 1998). Technically, there is scope for integrating this type of clause in the Mekong Agreement in the future.

Finally, the analytical framework which was developed for this research (Figure 3-5) can provide a useful lens for conducting further analysis. The analytical framework is also an advancement of the existing Institutional Analysis and Development framework developed by scholars of new institutionalism, and thereby advances the existing

knowledge academically. While situations associated with actors' positions can shift over time, the analytical framework developed through this study could provide a tool for NGO actors to develop advocacy strategies that could work more effectively within the context of different formal and informal rules and norms.

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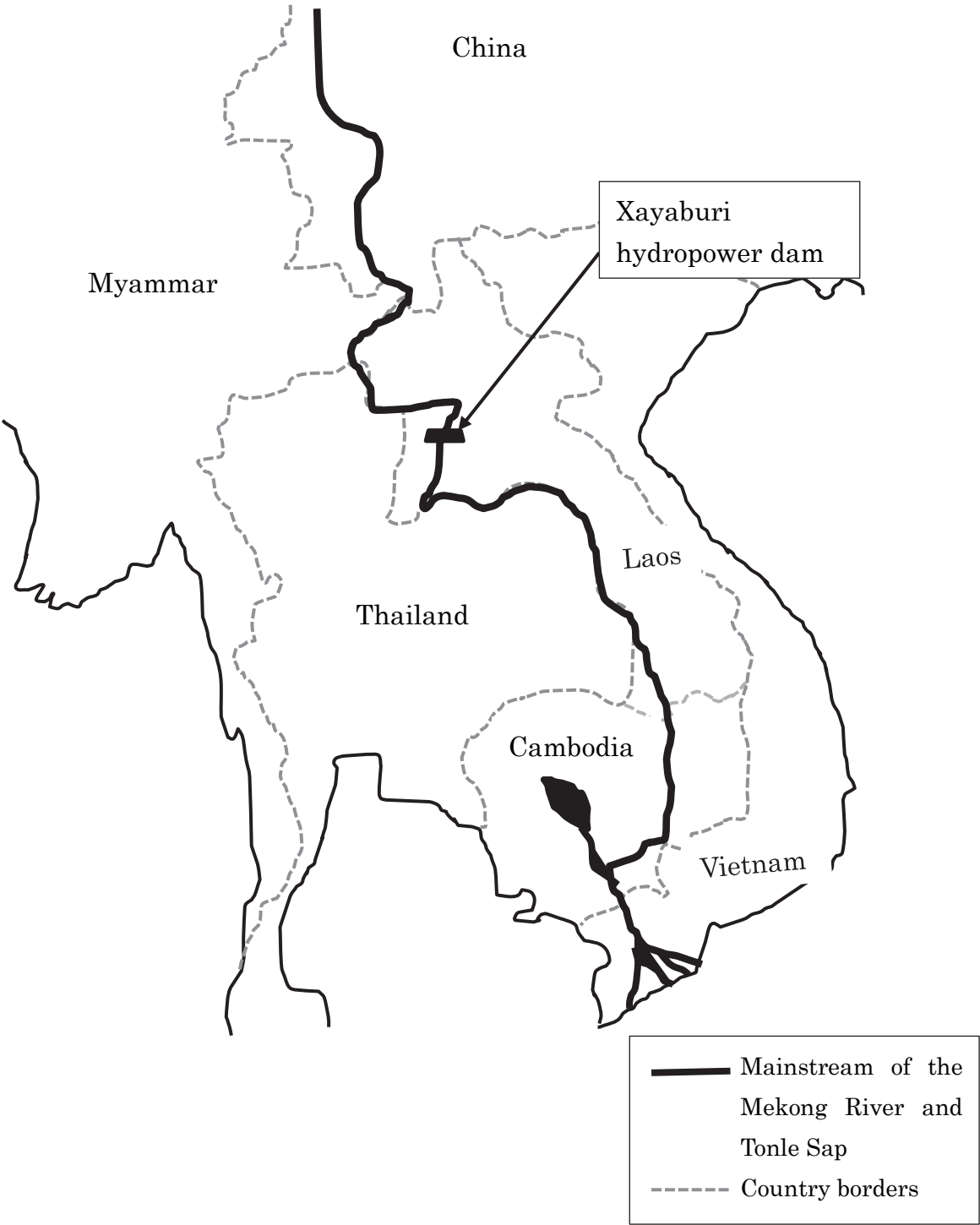
Key messages

- Currently, citizens face certain barriers to their full participation in the governance of transboundary waters, particularly on activities which take place beyond their national borders. Principles from existing international law on participation (such as the Aarhus Convention) could be integrated into existing agreements on transnational natural resources in order to improve participation and governance.
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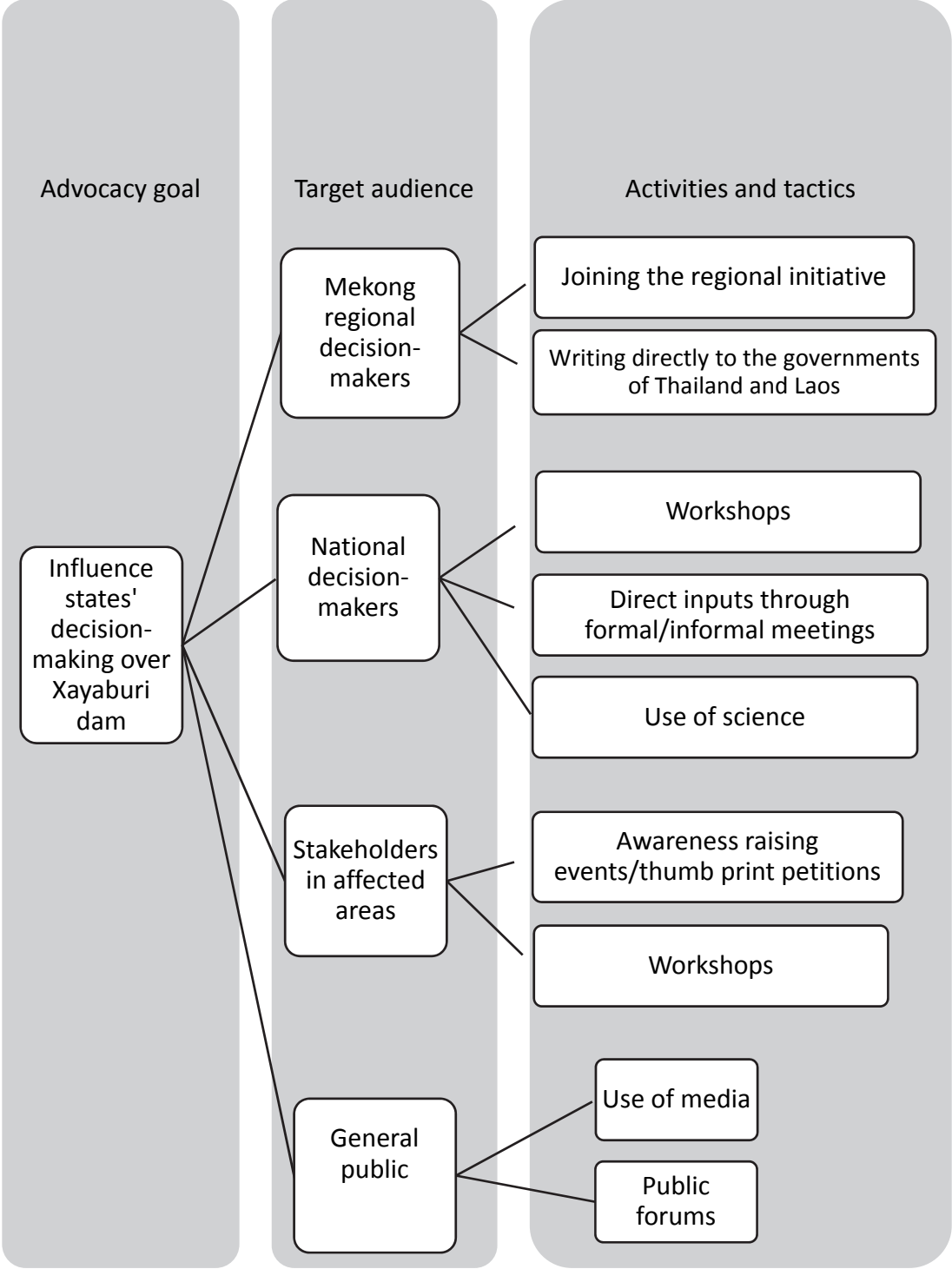
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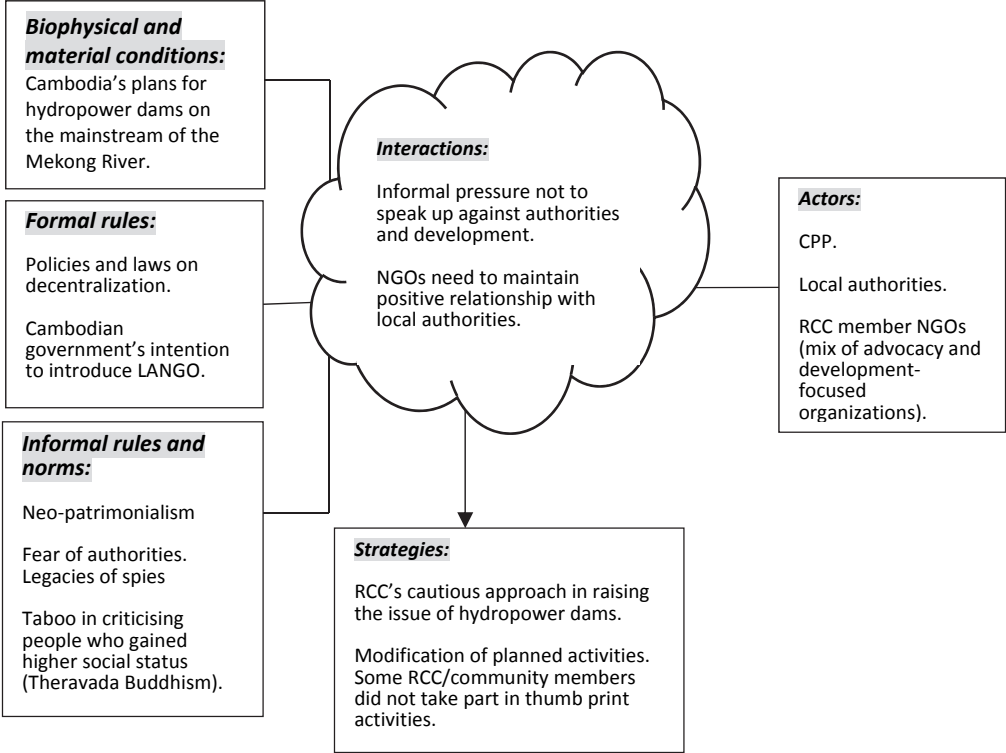
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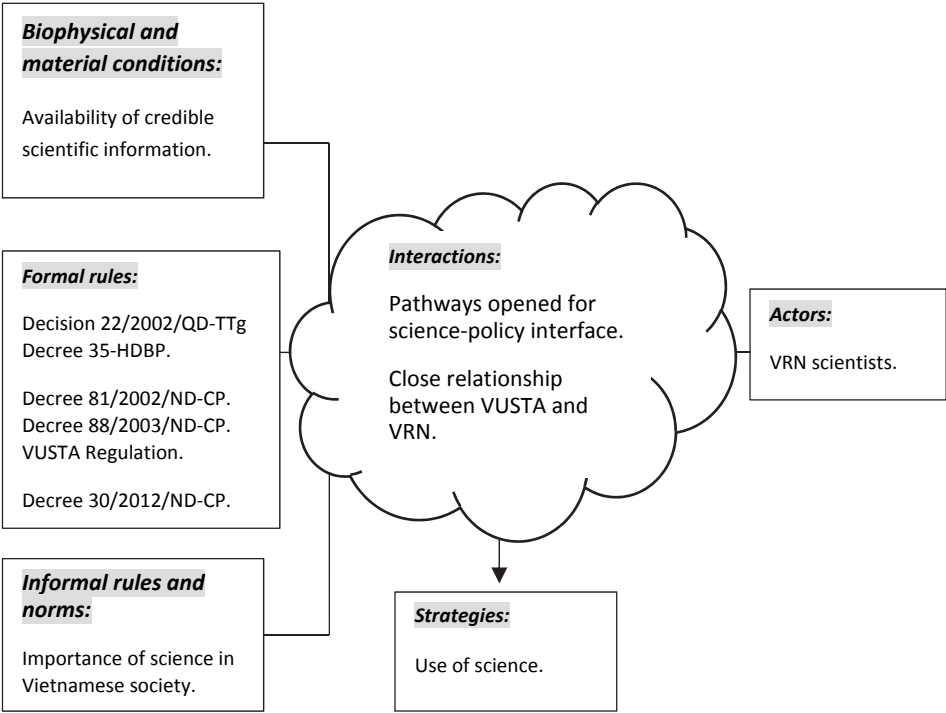
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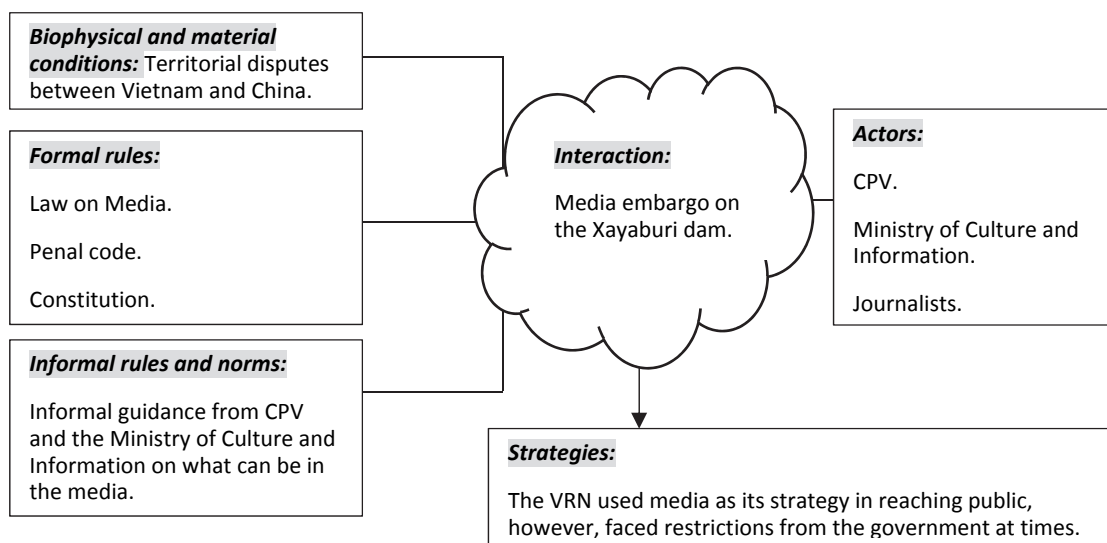
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What can we learn from the Xayaburi case?

This research brought three key conclusions. First of all, the research clarified that formal and informal rules and norms interact complementarily at times, and at other times have a competing relationship. As illustrated in Examples 1 (community awareness-raising activities) and 3 (the use of media), formal rules and informal rules were found to have competing relationships with each other in these cases. Actors play important roles in determining these relationships. For NGOs and civil society actors operating in any context, conducting an objective analysis of how formal and informal rules and norms influence their activities would be useful to inform and shape their strategies.

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