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**REPORT  
OF  
REGIONAL PUBLIC CONSULTATION ON  
THE DON SAHONG HYDROPOWER PROJECT**

Grand Champasak Hotel

Pakse, Lao PDR

12 December, 2014

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## Table of Abbreviations

CNMC	Cambodia National Mekong Committee
DFAT	Department of Foreign Affairs and Trade (Australia)
DSHPP	Don Sahong Hydropower Project
DWR	Department of Water Resources
EIA	Environmental Impact Assessment
HPP	Hydropower Project
ICCS	International Cooperation and Communication Section
IUCN	International Union for Conservation of Nature
LARREC	Living Aquatic Resources Research Center (Lao, PDR)
LNMC	Lao National Mekong Committee
MFCB	MegaFirst Corporation Berhard
MIWRMP	Mekong Integrated Water Resources Management Programme
MONRE	Ministry of Natural Resources and Environment (Lao, PDR)
MC	Member Countries
NMC	National Mekong Committee
PDG	Preliminary Design Guidance for Proposed Mainstream Dams in Lower Mekong Basin
PNPCA	Procedures for Notification, Prior Consultation and Agreement
PWUM	Procedures for Water Use Monitoring
TNMC	Thai National Mekong Committee
USAID	United States Agency for International Development
VNMC	Viet Nam National Mekong Committee
WWF	World Wildlife Fund

## List of Figures

Figure 1: Overall Prior Consultation process.

Figure 2: Prior Consultation process beginning 30 September, 2013 to 24 January, 2015.

Figure 3: Illustration of the general process of how comments from public consultation or information sharing will be taken into account

## Part 1: Introduction

On 30 June 2014, Lao PDR notified the other MRC Member Countries, Cambodia, Thailand and Viet Nam, through the MRC Secretariat, of its intent to have the Don Sahong Hydropower Project undergo the prior consultation of the MRC's Procedures for Notification, Prior Consultation and Agreement (PNPCA). The prior consultation process allows the notified Member Countries to discuss and evaluate potential transboundary impacts of the proposed water use and to support the MRC Joint Committee with the aim to arrive at an agreement on conditions to achieve optimum use and prevention of waste of the waters through a dynamic and practical consensus.

Public consultations in the frame of the prior consultation process seek and facilitate the involvement of those potentially affected by or interested in a proposed water use project.

The regional public consultation was arranged in addition to national consultations held in Cambodia, Lao PDR (during the preparation of the project's documents) and Viet Nam, and national information sharing meetings held in Thailand. Each national meeting is arranged by the respective National Mekong Committee Secretariat based on national regulations and frameworks.

This regional consultation was held by the MRC Secretariat and aimed to provide an additional venue for regional and international organisations, civil society, the media, research institutes and the MRC's Development Partners who may not have the opportunity to participate in the national events.

### Rationale

The regional public consultation aimed to inform, involve and consult potentially affected, interested stakeholders and the general public on the proposed Don Sahong Hydropower Project as well as the prior consultation process, the role of the MRC and the 1995 Mekong Agreement and its implications.

Language: The regional consultation was conducted in English with no simultaneous translation provided.

Dates and venues: The regional public consultation meeting took place on 12 December 2014 at the Champasak Grand Hotel in Pakse, Lao PDR. An optional site visit was organised on 11 December 2014 for those interested.

### Objectives of the consultation

The regional public consultation is held to discuss the overview of the MRC's Prior Consultation process, the overview of the Don Sahong Hydropower Project and the scope of the MRC's technical review including its available initial findings. It intends to provide understanding of stakeholder groups on the prior consultation process, possible transboundary impacts as specified in the first draft of the technical review by the MRC Secretariat. The event is to share relevant and available information for stakeholders and to gather feedback from them.

The consultation also intends to gain collective views, concerns and practical recommendations from different stakeholder groups in order to present them for the consideration of the MRC Joint Committee during the prior consultation process.

## Pre-consultation activities

Ahead of the consultation, the MRC Secretariat circulated all relevant information to target participants including all submitted documents of the Don Sahong hydropower project, handouts of planned presentations at the meeting, information on the PNPCA and the 1995 Mekong Agreement.

The MRC Secretariat made a public announcement on the regional consultation ahead of the event with a reference to all available information on the Don Sahong hydropower project documents on the MRC website.

The scope and purpose of the consultation was clearly stated and agreed upon at the beginning to avoid expectations that are impractical and too high.

Follow-up process was informed on how the information from the consultation would be synthesised and used for the Don Sahong Project's prior consultation and how the outcomes of the regional public consultation will be conveyed to the participant and other stakeholders.

## Methodology

A site visit was organised for Thursday, 11 December, 2014 to the DHSPP project site (Annex 2: Itinerary for the optional field trip). The aim of the field trip was to provide an opportunity for participants (participants to the meeting - Annex 4) to learn more about the technical aspects of the project and to see the site firsthand.

The morning session of the consultation meeting (Annex 1: Agenda) followed a workshop format with technical presentations followed by time for questions and comments. The afternoon began with statements read by two NGO representatives (Annex 3) followed by a plenary session for discussion. A professional facilitator managed the agenda (Annex 1). MRCS staff acted as rapporteurs to capture the content of questions, comments and discussion for the proceedings section of this report.

### Ground rules

Prior to the opening session, the facilitator reviewed 'ground rules' for discussion:

- Mobiles on silent; take calls out of hearing range of your colleagues
- Part of the facilitation function is to help keep the meeting on time (during your presentation will flash 5, 3 and 1 minute cards).
- During the Q&A, use the microphone so you can be heard.
- Questions or comments brief: will be noted in the report; will interrupt you as politely as I can if you stray into lecture mode.
- **Documentation**
  - Report structure will follow the agenda.
  - Will note Q&As as accurately as possible but briefly.

There were no objections to the ground rules and no additional ground rules were suggested.

### Presentations

There were six PowerPoint presentations in session 1 to 4:

- [S1 Opening Speech by CEO of MRC Secretariat.docx](#)
- [S2 1995 Mekong Agreement and PNPCA by CEO.pptx](#)
- [S3 Kent - MRCS Dec 2014 Kent Presentation New.pptx](#)



- [S3 Graeme DSHP - PNPCA Regional Consultation 12 Dec 14 FOR ISSUE \(Rev 1\).pptx](#)
- [S3 MegaFirst- PNPCA Regional Consultation 12 Dec 14 FOR ISSUE \(Rev 1\)-sediment and hydrology only.pdf](#)
- [S4 MRC Technical Review- Regional Public Consultation Presentation\\_final\\_11Dec14.pptx](#)

PowerPoint presentations are available on the MRC website.

#### **Discussion at the meeting**

All questions, comments and discussion points were recorded by MRCS rapporteurs. The content of the discussions by session comprises Part 2 of this report: Notes on the proceedings.

## Part 2: Summary and discussion of issues raised by stakeholders at the meeting

This section is based on material provided to the facilitator by the MRCS organising staff following the meeting in Pakse and were not part of the discussions at the meeting. The aim of this section is to highlight some of the main concerns raised by stakeholders at the meeting for the purpose of internal discussion within the MRC.

### 1. Climate change

Concerns about climate change, raised in the meeting primarily by IUCN, are based on the 'precautionary principle' advocated by many NGOs in view of the uncertainty surrounding climate change. According to (Quiggan, n.d.)<sup>1</sup>, "The precautionary principle is an important element of public policy in response to threats to environmental health, such as climate change. However, the principle remains controversial, and its implications in particular cases are not always clear." Quiggan suggests that the precautionary principle be reformulated with specific reference to complex systems. In such complex systems, the complete examination of all possible outcomes presupposed in probabilistic approaches to risk analysis is not possible, and unforeseen outcomes (surprises) may occur. If a course of action leads to domains where unfavourable surprises are likely, the burden of proof should be on the proponents of the course of action to demonstrate reasonable grounds for belief that it will not be harmful.

Following this formulation, the burden of proof would be on MFCB to demonstrate that their interventions are 'climate proof'. In the meeting, the MFCB responded that their own climate change models show no significant impacts on the DSHPP in the foreseeable future (30 years). MFCB made reference to MRCS climate models. Whereas MRCS climate models are not specific to the Don Sahong and may be based on different assumptions and use different modelling tools, any comparison would be difficult. Any predictions by any climate change model past the 30 year time frame are characterised by a high degree of uncertainty, and therefore, 30 years would seem to be a reasonable period for modelling and therefore, the MFCB models should be accepted as reasonable evidence that climate change has been taken into account.

This is not to suggest that further research on the possible impact of climate change on the Don Sahong should not be carried out by the MRC and others.

### 2. Use of additional information by the NMCs

MFCB noted that many of the technical questions raised in the meeting are addressed in the publically available information on their website (<http://dshpp.com/>). The reports referred to are as follows:

#### ENGINEERING AND TECHNICAL

[Don Sahong Hydropower Project – Engineering Status Report volume 1 \(Sept 2011\)](#)

[Don Sahong Hydropower Project – Engineering Status Report volume 2 \(Sept 2011\)](#)

[Don Sahong Hydropower Project – Hydrology, Hydraulics and Sedimentation Studies \(Oct 2011\)](#)

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<sup>1</sup>Quiggan, J. n.d. Complexity, Climate Change and the Precautionary Principle. Climate Change Working Paper: C07#3. Risk & Sustainable Management Group. Australian Research Council Federation Fellow, University of Queensland. Accessed at [http://www.uq.edu.au/rsmg/WP/Climate\\_Change/WPC07\\_3.pdf](http://www.uq.edu.au/rsmg/WP/Climate_Change/WPC07_3.pdf)

[Don Sahong Transboundary Hydraulic Effects Study \(Feb 2013\)](#)

[Don Sahong CFD Modelling Report \(May 2014\)](#)

[Don Sahong Sediment Sampling Campaign \(Jul 2014\)](#)

[Don Sahong Sediment Deposition Modelling Report \(Sept 2014\)](#)

[Don Sahong Modelling of Upstream Channels \(Nov 2014\)](#)

#### **ENVIRONMENTAL AND SOCIAL**

[Environmental Impact Assessment \(Jan 2013\)](#)

[Environmental Management and Monitoring Plan \(Jan 2013\)](#)

[Social Impact Assessment \(Jan 2013\)](#)

[Social Management and Monitoring Plan \(Jan 2013\)](#)

[Resettlement Action Plan \(Jan 2013\)](#)

[Cumulative Impact Assessment \(Jan 2013\)](#)

[Response to WWF claims about impacts on Dolphins](#)

#### **FISHERIES**

[Fisheries Study \(2010\) \(Annexed to EIA\)](#)

[Fisheries Study \(2013\) \(Annexed to EIA\)](#)

[Fish Passage Improvement Phase I at Xang Pheuak Noi \(May 2011\)](#)

[Fish Passage Improvement Phase II at HouWai \(Apr 2012\)](#)

[Fish Passage Improvement Phase III at HouSadam \(Apr 2013\)](#)

[Fish Passage Improvement Phase IV at KhoneLarn \(Mar 2014\)](#)

[Khone Falls Fishery Monitoring Methods \(Nov 2014\)](#)

[Picture Presentation of the Hou Sadam Fish Passage Improvement Phase III \(Apr 2013\)](#)

[Picture Presentation of the Hou Sadam Fish Passage Improvement Phase III \(May 2013\)](#)

[Picture Presentation of the Khone Larn Fish Passage Improvement Phase IV \(Mar 2014\)](#)

[Preliminary study for the Lao-Cambodia transboundary project on fishery \(Philippe Cacot, Dec 2007\)](#)

#### **PRESENTATIONS**

[MRCS Technical Workshop – Engineering Presentation \(Mar 2014\)](#)

[Pakse Site Visit – Engineering Presentation \(Mar 2014\)](#)

[Pakse Site Visit – Environmental and Fish Migration Presentation \(Mar 2014\)](#)

[Pakse Site Visit – Presentation on the Khone Larn Fish Passage Improvement \(Mar 2014\)](#)

#### **OTHERS**

[DSPC response to MRCS Initial Review on the Don Sahong Hydropower Project \(Sept 2014\)](#)

MFCB regularly updates their website and it is the responsibility of those interested to go to the site in search of information (no invitation necessary). MFCB further stated they would be willing to provide other additional information, provided said information is not of a proprietary nature.

What information the NMCs choose to use, and how they choose to use it, is the purview of the individual NMCs as noted by a representative from the LNMC (Notes on the proceedings, session 6, row 7).

### 3. Lessons learnt from Xayaburi

Lessons learnt do inform stakeholders and stakeholders do act on them. However, it should be noted that the Xayaburi dam is a 'work in progress'. Rather than 'lessons learnt' (past tense), it might be more accurate to refer to 'lessons we are learning'. Research and development agencies and NGOs too numerous to mention are eager to offer 'lessons learnt'. It is only natural that lessons learnt tend to reflect the perspective of the agency writing the lessons. It is equally natural for those to whom the lessons are directed to choose which ones they feel they can apply according to their own perspectives. Lessons learnt can inform stakeholders. Good examples can be found in the public health sector.

For example, Cieza *et al.* (2005)<sup>2</sup> used lessons learnt to provide an updated version of the linking rules the International Classification of Functioning, Disability and Health first published in 2002 (The ICF is a common reference framework for functioning and contributes to improved outcome research).

Similarly, Berkman *et al.* (2005) conducted a critical analysis of Brazil's HIV/AIDS programme with a view to applying those lessons in Africa.<sup>3</sup> In their conclusion, the authors offer, "...a final lesson from Brazil that is worthy of notice: the National Aids Program has become a source of national pride for the Brazilian people. It is "owned" by the government, civil society, the media, and, most importantly, people living with HIV. Solidarity and pride, it seems, may be the most effective counter to stigma. To control HIV, we must first admit that the problem belongs to all of us".

Hydropower development is an entirely different challenge, however, the 'final lesson' offered by Berkman *et al.* echoes the major principle of the PNPCA, which is the principle of goodwill and commitment to cooperation.

Point number 8 in the Joint Development Partner Statement: 19th MRC Council Meeting, 17 January 2013<sup>4</sup> reads:

8. We request the MRC Secretariat to inform in its annual report to the Council on procedures about lessons learned so far from the first PNPCA process. We believe that, inter alia, the participation of civil society should be improved, and that the consultation period of six months is too short. We recommend that all ambiguities regarding the application of the PNPCA be resolved before any future mainstream project proceeds.

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<sup>2</sup>Cieza, A., Geyh, S., Chatterji, S., Kostanjsek, N., Ustun, B. and Stucki, G. ICF linking rules: an update based on lessons learned. *J Rehabil Med* 2005; 37: 212–218.

<sup>3</sup>Berkman A, Garcia J, Muñoz-Laboy M, Paiva V, Parker R. A Critical Analysis of the Brazilian Response to HIV/AIDS: Lessons Learned for Controlling and Mitigating the Epidemic in Developing Countries. *American Journal of Public Health* 2005;95(7):1162-1172. doi:10.2105/AJPH.2004.054593.

<sup>4</sup>Accessed at <http://www.mrcmekong.org/news-and-events/speeches/joint-development-partner-statement-19th-mrc-council-meeting-17-january-2013/>

In his opening presentation, Mr. Hans Guttman, CEO, MRCS, outlined the PNPCA process as follows:  
**Purpose of the Prior Consultation as per Article 5.4.3 of the PNPCA**

The MRC JC shall aim to arriving at an agreement on the proposed use and issue a decision that contains the agreed upon conditions. That decision shall become part of the record of the proposed use and of the record of the use of the waters when commenced.

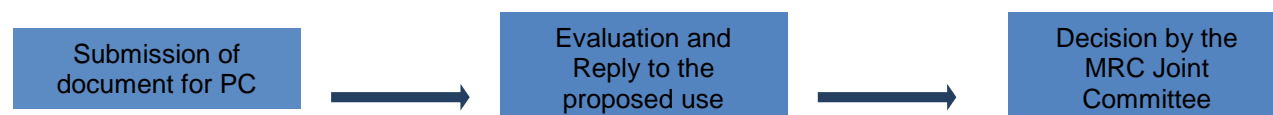
The notifying State(s) shall not implement the proposed use without providing the opportunity of the other member states to discuss and evaluate the proposed use. The MRC JC shall take note of replies and place in the record for the proposed use of any concerns or reservations made by the notified State(s).

The Prior Consultation process aims at reaching agreement between Member Countries on:

- Whether the proposed use reflects a reasonable and equitable use of the Mekong River system
- The acceptability or otherwise of any possible impacts associated with the construction and operation of the project
- Proposed measures to avoid, minimise and mitigate these impacts, as agreed upon conditions
- Opportunities for increasing the joint benefits and cooperation relating to the development

**Note:** These points also generally constitute the main ‘talking points’ of a public consultation. The discussions during the Pakse consultation were transcribed simultaneously by three rapporteurs with plenary session discussions recorded in audio format. The full record appears below in the section *Notes on the proceedings*.

**The process of the Prior Consultation**



<p>Documents and PC Form submitted by Notifying country to the Joint Committee through the MRC Secretariat in a timely manner.</p> <p>MRC Secretariat reviews the documents for completeness and shall transmit copies of the document to other Member states.</p>	<p>Notified countries should evaluate the project and reply to the Joint Committee through the MRC Secretariat by using the PC Reply Form.</p> <p>Additional information, consultation, presentation or field visit can be requested.</p> <p>A working group or technical team can be established.</p>	<p>Joint Committee shall aim to arrive to an agreement on the proposed use and issue a decision that contains the agreed upon conditions.</p> <p>Timeframe for the Prior Consultation should be 6 months, but can be extended by the decision of the Joint Committee if necessary.</p>
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**The role of the NMCs in the Prior Consultation process as per Article 5.3.1 of the PNPCA**

- To inform the relevant line agencies of the scope, content and form/format required for Prior Consultation of a proposed use covered by the Procedures;

- To receive, review and check documentation for any Prior Consultation submitted to it to ensure that it is complete and consistent with the content and form/format;
- To assemble and transmit the proposal with appropriate documents to the MRC Secretariat for their submission to the MRC JC and transmission to the other NMCs;
- To facilitate any consultations, presentations, evaluation and site visit as requested by the MRC JC for the proposed use; and
- To record and transmit copies to respective line agencies or party(ies) making the proposal for a definite use of water through the Prior Consultation process of any comments or response received from the MRC Secretariat.

**And as per Article 5.3.2 of the PNPCA**

- To receive, check for completeness, record and make a file of the documents for PC according to the PC Form/format and replies from notified states according to the PC Reply Form/format;
- To submit the documents for PC to the MRC JC and copy to each other NMCs;
- To review, analyse and provide technical advice to the MRC JC as may be requested by it;
- To supply available additional data and information and facilitate the meetings as requested by member State(s) concerned;
- To provide available technical support for any evaluation. If required, the MRC JC may set up fact-finding team supported by the Secretariat to visit the project site; and
- To enter the relevant data and information into the MRC Data and Information System.

**And also as per Article 5.3.3 of the PNPCA**

- To acknowledge and review documents of any Prior Consultation submitted to it through the MRC Secretariat;
- To review any comment submitted to it by any member State;
- To carry out consultation on the proposed use among parties concerned with the support of the MRC Secretariat.
- To set up a Working Group to assist in the Prior Consultation process aiming at arriving to an agreement on the proposed use.
- To make every effort to address any matters that may arise during the process of Prior Consultation.
- To verify and unanimously confirm availability of surplus quantity of water on the mainstream in accordance with criteria approved by the MRC Council under Article 26 of the Mekong Agreement should there be a proposed use for inter-basin diversion in the dry season.

**The role of the MRC Council as per Article 5.3.4 of the PNPCA was also noted:**

The function of the MRC Council under the Procedures is in accordance with the stipulation of the Mekong Agreement, i.e. To entertain, address and resolve issues, differences and disputes referred to it by any the Joint Committee.

The overall process is depicted in Figure 1 below.

## Overall process of the PC

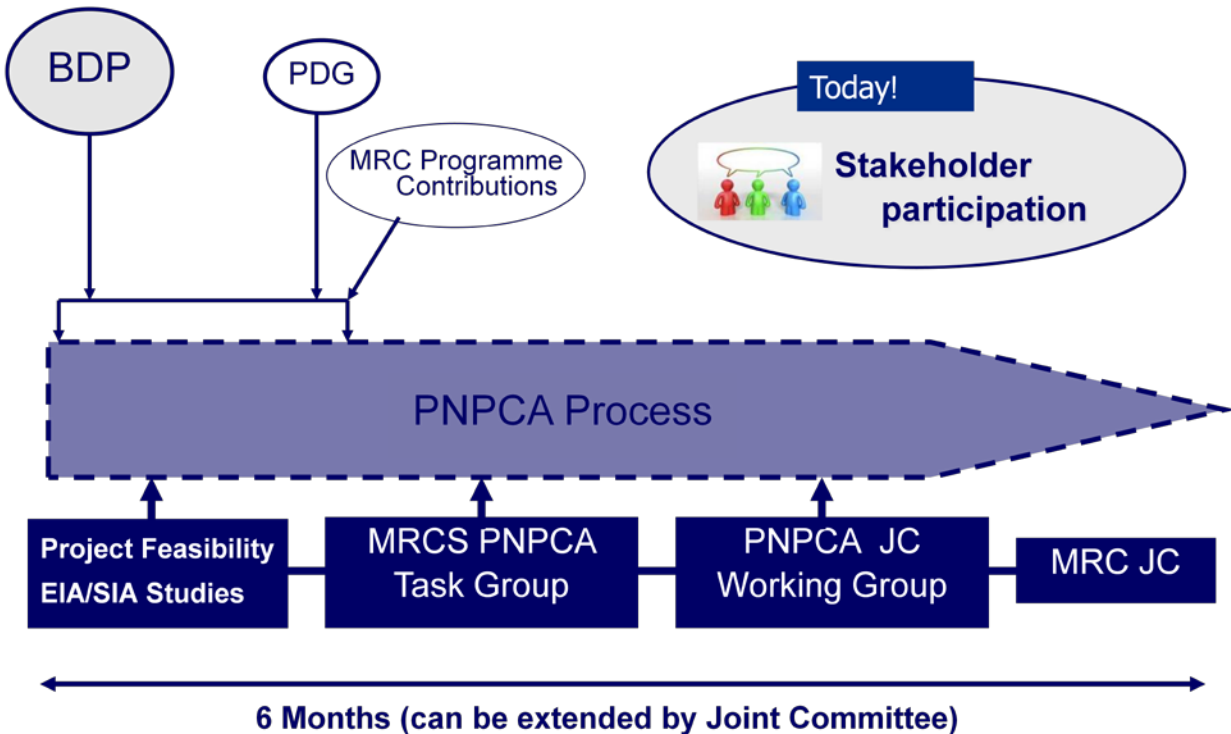


Figure 1: Overall Prior Consultation process.

### 4. Public consultation process (including the national consultations) for the DSHPP

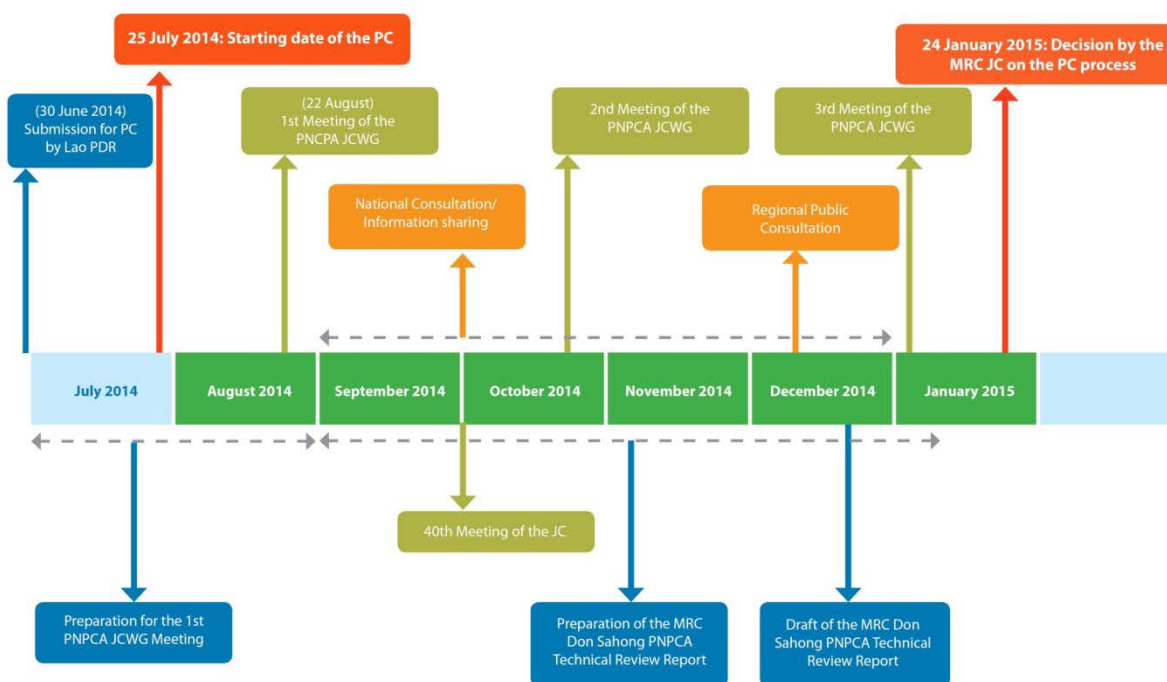
#### Public participation and involvement

Public participation and involvement has been agreed to as part of the Prior Consultation process. Public participation and involvement is central to the MRC policy framework of integrated water resources management and is generally required by national legislation (Slide 16).

In his presentation, the CEO outlined some of the milestone events in the consultation process:

- 30 Sept 2013 ☞ submission by Lao PDR for “Notification” of DSHPP
- 30 June 2014 ☞ letter from LNMCS on “Prior Consultation” of the DSHPP
- 3 July 2014 ☞ MRCS notified other NMCS of the Prior Consultation of the DSHPP submitted by Lao PDR
- 25 July 2014 ☞ Official starting date of the Prior Consultation process

The overall process, including next steps, is depicted in Figure 2 below.



**Figure 2: Prior Consultation Roadmap Note:** This figure was for illustrative purposes for the consultation only and is not a full record of events.

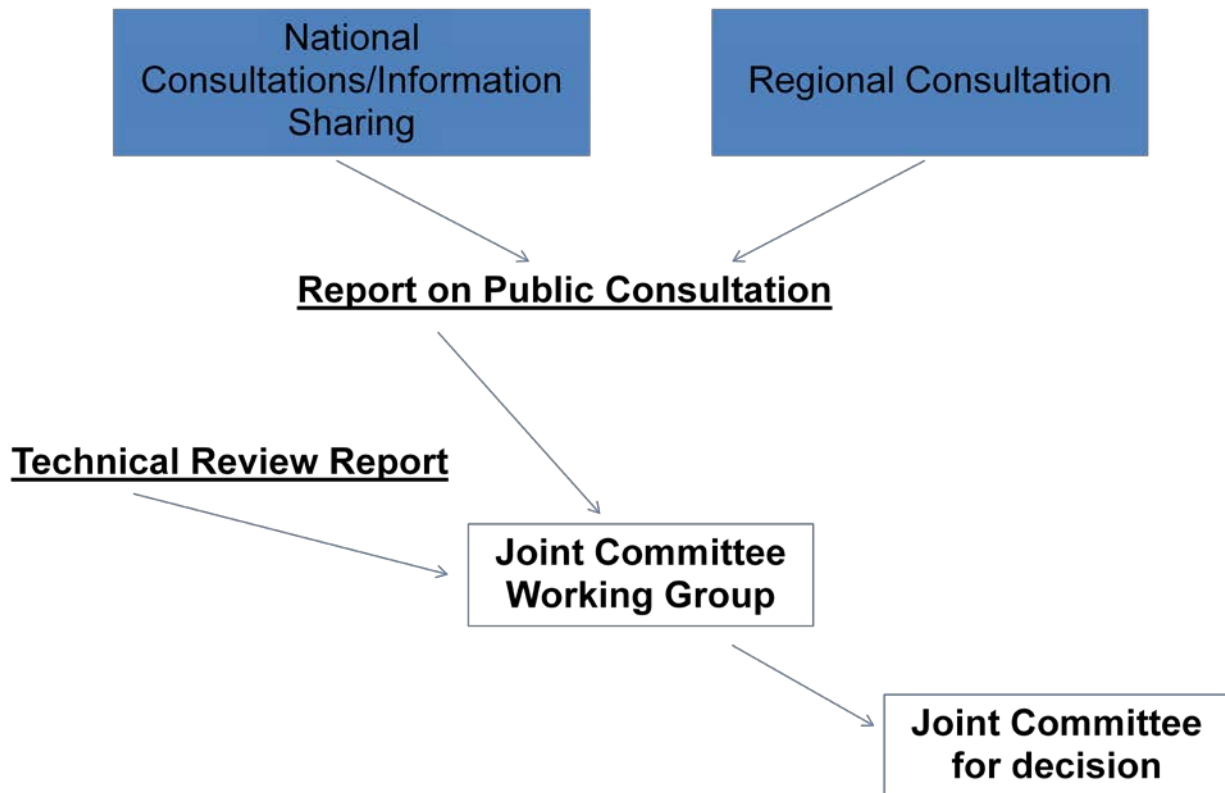
## Recommendations for future consultations

Public consultation can and should be a mutually beneficial exercise. The potential value of the process to the MRC lies in how the organisation has and will deal with stakeholders in the PNPCA process, and in this case, with their concerns with the DSHPP in particular. This requires direction from the Council and the Joint Committee, which is a matter for internal discussion. The MRC's decision may be informed by public consultation, but cannot be dictated by often conflicting voices from public stakeholders.

The legitimacy of the engagement with stakeholders lies in a quick response to the consultation event. This does not need to follow the MRC reporting format, and in fact if it is not formatted as an MRC report it would create a greater sense of ownership from the stakeholders. Because stakeholders are not party to MRC or NMC internal discussions, they want to see evidence that their views are reflected in a brief 'Notes on the proceedings' report.

The outcomes of the regional public consultation will be recorded and submitted with reports of national consultation or information sharing conducted in Cambodia, Thailand and Viet Nam. The report on public consultation will be then submitted to the Joint Committee Working Group before submitting to the Joint Committee for decision.





**Figure 3:** This figure illustrates the general process of how comments from public consultation or information sharing will be taken into account

### **Suggestions to guide interaction with stakeholders at DSHPP public consultations**

The MRCS and NMC staff can expect to engage extensively with stakeholders during the one or two days on site and at the meeting. This note provides some suggested guidance for these interactions.

It is the responsibility of the facilitator to ensure that questions and comments posed in the meeting must be replied to in the meeting.

Consultants attending the meeting do so in support of the MRC or NMC and should not make any statements on behalf of the MRC or Secretariat. Consultants may be called upon to clarify technical issues, or interpretations of the 1995 Mekong Agreement and its Procedures.

While the Technical Review Report will address areas where the EIA and other documents could be supplemented by additional work, it is not intended to be a critique of the documents submitted by Lao PDR.

The Technical Review Report is intended to provide the MRC Joint Committee with all the available information it would need in order to arrive at an agreement in terms of Article 5.4.3 of the PNPCA, and to establish agreed upon conditions.

In the event that the JC considers the available information to be insufficient to establish agreed upon conditions, it may consider extending the period of Prior Consultation to allow for more information to be processed, and in keeping with the spirit of cooperation from all parties.

The Technical Review Report will be based on a variety of sources including; reports from the independent Expert Groups appointed by MRC, feedback from the stakeholders, indigenous knowledge from fisher folk, information gained from field visits, and the information reports and data provided by the Lao PDR.

The Technical Review Report will reflect a non-partisan, scientifically-based assessment of the likely extent of transboundary impacts, and impacts on the ecological balance of the Mekong River Basin. It will reflect on these possible impacts in the context, spirit and intent of the entire 1995 Mekong Agreement.

The Preliminary Design Guidance is preliminary and advisory in nature. The intention is to provide developers of proposed dams on the Lower Mekong mainstream with an overview of the issues that the MRC will be considering during the process of prior consultation under the 1995 Mekong Agreement. Developers need to take the PDGs into consideration when designing mainstream dams. There is no 'compliance' to the PDG, but rather an assessment of the extent to which the developer has considered the advice.

There is no obligation to have 'no significant impact', but rather that any impacts should be reasonable and reflect an equitable use of the 'development opportunity space', and that the developer has taken all viable measures to avoid, minimise and mitigate impacts. This is consistent with the interpretation of 'sustainable development'.

The MRC Joint Committee may establish measures proposed in the Technical Review Report to further avoid, minimise and mitigate impacts as 'conditions' to become part of the record of the proposed use, and which may be taken up in the Procedures for Water Use Monitoring (PWUM), to be regularly reported on.

The Technical Review Report will not make any inference on the reasonableness and equity of any impacts, that being the purview of the Joint Committee.

The draft Technical Review Report will be sent to the Member Countries on 20 December 2014, to give them time to consider the report and provide comment and feedback to be included in the Final Technical Review Report, which is due in mid- January 2015.

The MRCS may recommend an extension to the PC process to the JC Working Group once the final reports from the Expert Groups have been submitted. If this is done, any extension recommended would be based on the time needed to absorb and evaluate the materials provided, particularly some recently received data on fish migration. It will amount to months not years.

There is a duty on all parties to undertake the PC process and address the concerns in a timely manner. Agreement on conditions is a dynamic process, and could happen even after the project becomes operational.

Engagement with the public is based on the 'involve' level of the International Association of Public Participation (IAP2) Spectrum of Public participation and is described as;

"To engage with the public to ensure that public concerns and aspirations are consistently understood and considered by the Expert Groups in the preparation of their reports and the Joint Committee in its deliberations."

"The MRC will work with you to ensure that your concerns and aspirations are directly considered in the Technical Review Report, in proposing alternatives to avoid, minimise and mitigate impacts, and MRC will provide feedback on how public input influenced the decision made by the Joint Committee"

## Logistical and organisation points

1. To reduce the time spent viewing technical presentations, should arrange to have all PowerPoint presentations mailed out to participants at least one week before the event. Ask participants to view the presentations and come prepared with questions on technical points.
2. Limit PowerPoint presentations to ten minutes. Allow at least 30 minutes for discussion following presentations.
3. Specify in advance and in detail what the reporting requirements are.
4. A consultation meeting needs a facilitator and two rapporteurs. The facilitator cannot take notes while facilitating. Rapporteurship requires intense concentration and rapporteurs need breaks.
5. The site visit on Thursday, 11 December, 2014 was both popular and useful. It allowed time for the participants to learn about the technical detail of the project and see it firsthand.

## Part 3: Notes from Regional Public Consultation on Don Sahong Hydropower Project Prior Consultation

12 December 2014, Champasak Grand Hotel, Pakse, Champasak Province, Lao PDR.

### Questions and Comments following the presentations

#### Session 1: Welcome remarks by the Joint Committee Chairperson

The Joint Committee Chairperson sent his regrets that he was unable to attend due to prior commitments. The CEO of MRC Secretariat gave the welcome speech.

#### List of Acronyms

CNMC: Cambodia National Mekong Committee

LNMC: Lao National Mekong Committee

TNMC: Thai National Mekong Committee

VNMC: Viet Nam National Mekong Committee

DWR: Department of Water Resources

MIWRMP: Mekong Integrated Water Resources Management Project

PDG: Preliminary Design Guidance for Proposed Mainstream Dams in Lower Mekong Basin

PNPCA: Procedures for Notification, Prior Consultation and Agreement

#### Session 2: Orientation on the MRC's Prior Consultation Process by MRC Secretariat CEO Hans Guttman and representatives from the member countries

PowerPoint presentation:

- [S21995 Mekong Agreement and PNPCA by CEO of MRC Secretariat.ppt](#)

#### Questions and Comments

1	<p>Oxfam Australia:</p> <p>Will all the individual reports of each national consultation earlier be made public on the MRC website?</p> <p>Regarding individual reports for the national consultations, will they be made public as in the case of Xayaburi?</p>	<p>MRCs CEO: MRC Secretariat will make public all reports as agreed by the Member Countries, and we encourage the Member Countries to consider making them public.</p> <p>The CEO replied that it is within the purview of the National Mekong Committees to consider doing so and the MRC Secretariat will facilitate that.</p>
2	<p>Member of Thai National Mekong Committee asked that the view of the TNMC be noted: i.e. that the definition of prior consultation is clearly stated in the 1995 Mekong Agreement, that under the PNPCA the major principle, as indicated in the drafting of the procedures, is the principle of goodwill; that after submission of the Lao PDR notification in September,</p>	<p>Prior Consultation is defined in the 1995 Mekong Agreement as follows;  <b>Prior consultation: Timely notification plus additional data and information to the Joint</b></p>

	<p>2014, TNMC submitted a letter to the MRC Secretariat on 8 November and then MRC Secretariat submitted to the Government of Lao PDR to inform them of their initial concerns regarding the Don Sahong Project. Certain activities after notification started so Thailand did not wait until Lao PDR resubmitted for prior consultation.</p>	<p><i>Committee as provided in the Rules for Water Utilisation and Inter-Basin Diversion under Article 26, that would allow the other member riparians to discuss and evaluate the impact of the <b>Proposed use</b> upon their uses of water and any other affects, which is the basis for arriving at an agreement. <b>Prior consultation</b> is neither a right to veto the use nor unilateral right to use water by any riparian without taking into account other riparians' rights.</i></p> <p>The MRC Secretariat CEO noted that there were official communications by the Member Countries which were then discussed at a Joint Committee meeting in January, 2014 which were then taken up at the Council meeting in June, 2014 and the official PNPCA process was activated at the Council meeting in July 2014.</p> <p>The CEO recognised that there was activity and a special session by the Joint Committee to refer it to the Council meeting, but in that context the Government of Lao PDR was informing and discussing with the Member Countries. The process leading to the prior consultation is well-documented.</p>
3	<p>Cambodia National Mekong Committee noted that:</p> <p>The CNMC noted that after the submission for “Notification” of the Don Sahong Hydropower Project by Lao PDR there was a lot of communication as suggestion from the notified countries with Lao PDR via the MRC Secretariat before Lao PDR decided to re-submit the project for prior consultation.</p>	<p>MRCS CEO noted that all official communications are on record with the MRC Secretariat and that these details were omitted in the slide for economy of presentation only.</p>

### Session 3: About the Don Sahong Hydropower Project presented by the project developer/LNMC

PowerPoint presentations:

- [S3 Kent - MRCS Dec 2014 Kent Presentation New.pptx](#)
- [S3 Graeme DSHP - PNPCA Regional Consultation 12 Dec 14 FOR ISSUE \(Rev 1\).pptx](#)

- [S3 MegaFirst- PNPCA Regional Consultation 12 Dec 14 FOR ISSUE \(Rev 1\)-sediment and hydrology only.pdf](#)

General remarks by Dr. Kent Hortle preceding the presentation: Don Sahong HPP by Project Developer/LNMC presentations will be made available. Regarding mitigation of potential impacts, sediment and hydrology of the Mekong in this ‘hydropower era’, and environmental studies and fish migration pathways are major concerns. These presentations are intended to show how the Don Sahong Hydropower Project is addressing those concerns. Dr. Kent Hortle noted that additional studies were carried out during 2014 by the Government of Lao PDR Fisheries Department and other agencies.

**Questions and Comments**

1	<p>CNMC recalled that the Regional Public Consultation on Don Sahong Hydropower Project (DSHPP) Prior Consultation today is the outcome of the Meetings of the PNPCA Joint Committee Working Group (JCWG). It is stated as one of the activities in the Roadmap of the PNPCA JCWG. While designing this particular meeting, there are very clear objectives and intension of the meeting. One of the main objectives of this meeting is to see and collect the independent views, especially from stakeholder groups. In this regard, CNMC would like to ensure that there is enough time from stakeholders/ participants to express their views/ concerns regarding DSHPP and more over all questions and answers in the meeting should be done in plenary so that every meeting participant is able to clearly hear. The questions/answers of the meeting should not be done outside of the meeting/ during tea break.</p> <p>MRC Secretariat Fisheries Programme: LEE traps are still a common sight. How many kilogrammes of fish are caught per Lee trap?</p> <p>What are the project’s ‘hypotheses’ of the downstream and upstream studies and monitoring?</p>	<p>Dr. Kent Hortle replied:</p> <p>We estimate 700 kg per year. This is based on interviews with fishers. Monitoring of 60 households by MFCB show catches average about 1 tonne per year per household, of which a large proportion is from lee traps. Most of the fish caught in lee traps are fish migrating upstream to breed.</p> <p>The project is mainly monitoring the migration of fish across the falls, for which there could be various hypotheses. An assumption is that the methods used provide representative data upstream and downstream.</p>
2	<p>CNMC noted that: Experts are well aware of fish migrations through Don Sahong over the course of a year. To what extent is the project monitoring up and down stream? CNMC suggested the project consider that migrating fish could be from as far as the Mekong Delta and Tonle Sap Lake.</p> <p>Baseline data is important and of will be of considerable use in the future. Local people understand the impact on social and economic factors. Benchmarks are therefore needed on environmental flow and/or assets, social and economic aspects in the context of transboundary.</p>	<p>CNMC disagreed on several comments from the developer regarding fish migration, sediment transport, water quality, etc. For the study and monitoring surrounding the site, CNMC would like to know what distance [from the project site] the developer considers and would like to suggest the developer’s study take into account transboundary issues (including the Mekong Delta and the Tonle Sap). Studies that only include the immediate surrounding are not sufficient.</p>

3	<p>Member of TNMC, noted that:</p> <p>The information presented by the Don Sahong Hydropower Project has been posted on their website (DSPC Website), however, Member Countries have only recently seen the information.</p> <p>TNMC did not accept the information posted on the DSPC Website dated 27 September, 2014 as quoted: “Two representatives from the Thai consulate visited the field office of the Don Sahong Project near Khone Phapheng on Friday 26 September. The visit was part of the MRC Procedures for Prior Consultation into the Don Sahong Project” as this visit was not organised through the approved channels/PNPCA Process.</p> <p>TNMC asked: How can we maintain flow in other channels as the developer has modified the flow into one channel. How can we ensure the flow in other channels is maintained according to the operational rules? Will the developer be willing to consider under certain conditions sacrificing production capacity to maintain the flow, particularly of the Khone Phapheng and the alternate fish passages?</p> <p>Oxfam Australia asked if the developer would also consider other related issues such as sediment flow.</p>	<p>The developer noted the comment.</p> <p>The developer replied that ‘yes’, they would consider adjusting generation to meet flow requirements in other channels.</p> <p>The developer noted that flows in the Hou Phapheng would be monitored and when flows approach 800m<sup>3</sup>/s, the flow through the turbines would be automatically adjusted through telemetered data from the flow gauging.</p> <p>The developer replied that ‘yes’ they would.</p>
4	<p>DFAT Australian Embassy in Lao PDR asked:</p> <p>If the developer could say more about how flows will be maintained?</p> <p>What investigations and analysis will be done regarding turbines on the effects of fish migration and downstream fish passage?</p> <p>Has there been an independent review of data analysis?</p> <p>What investigation has been done on the survival of Mekong fish in bulb turbines? This would enhance</p>	<p>The developer referred to their presentation in which they point out there is no indication from their current studies that the project will have any significant impact on flow under normal conditions. Under conditions other than normal, they expect flows to vary but not outside the parameters of the minimum flows specified.</p> <p>A blade strike model has been developed and results will be made available. Pressure impacts are small with a low head turbine.</p> <p>The developer said they would welcome</p>

	<p>assessment, particularly impacts of the pressure, shear and blade strike on all sizes of fish passing through the turbines.</p> <p>What are the plans for an independent investigation of the monitoring data?</p>	<p>any independent reviews of their data.</p>
5	<p>DFAT Australian Embassy Bangkok expressed a concern regarding the review mentioned in the Briefing Note in Support of Public Consultation regarding Prior Consultation for the Proposed Don Sahong Hydropower Project (page 24, sediment) and also the relative lack of flow control (page 20) needs further explanation by the technical review team in comparison with the Don Sahong Project technical report.</p>	<p>Mr. Graeme Boyd, Developer's Expert, reiterated the points made in their presentation (S3 Graeme DSHP - PNPCA Regional Consultation 12 Dec 14_FOR ISSUE (Rev 1).pptx) on sediment, specifically, that whereas water remains in the head-pond for only 2-3 hours their models suggest there will be no significant impact on sediment flow.</p> <p>The MRC Secretariat noted the point and, as indicated later in the plenary session, they would review their report and incorporate relevant information from other sources. The technical review team also reported that according to their studies there will be significant impact on sediment flow.</p> <p>Graeme Boyd provided an explanation of flow control by the turbines which will automatically adjust turbine flows to maintain the necessary overall river flow conditions by continuously reading data from automatic water level recorders that will be installed as part of the project. Mr Boyd explained that this is common technology for modern hydropower stations and that the necessary flow control is readily achievable.</p>

#### Session 4: MRC Technical Review and initial findings, presented by Dr. Piriya Uraiwong, MRC Secretariat

PowerPoint presentation:

- [S4 MRC Technical Review- Regional Public Consultation Presentation\\_final\\_11Dec14.pptx](#)

General comments preceding the presentation:

- PDG on hydropower was used to prepare the guidelines by the technical Review team



- Fisheries technical review by Dr. So Nam, MRC Secretariat Programme
- Irrawaddy dolphin and water quality findings by Henrik Larsen, MRC Secretariat Programme
- Hydrological assessment and sediment by Dr. Peter Adamson, independent consultant presented by Michael Haase, MRC Secretariat Programme.
- Socio Economic Transboundary impact assessment by Franz – Dieter Wahl, independent consultant presented by Dr. Phattareeya Suanrattanachai, MRC Secretariat Programme.

The presentation on the findings by Technical Review Group of the MRC Secretariat is based on available information and data which was provided prior to mid-November, 2014. Additional information received after is under review and analysis by the expert team.

### Questions and comments

	Question	Respond
1	Fisheries Administration, Cambodia: The sentence on the impact on fisheries should not say 'partial' but rather 'uncertain' or equivalent to the word 'uncertain' as there are many unknowns.	The comment was noted.
2	CNMC: In the presentation by project developer/LNMC, there is a comparison between the Don Sahong Hydropower Project (DSHPP), Nuozhadu of China, both are the Mekong River mainstream hydropower projects and Lower Sesan II of Cambodia, which is the Mekong River tributary project. CNMC doubts on the Developer/LNMC's intention behind this comparison. CNMC is not sure whether LNMC has paid attention to this matter or not. In the MRC legal framework, there is a clear categorisation of a mainstream project and a project on the Mekong River tributary and even differentiates clearly which types of project are subjected to "Notification" and which types of project subjected to "Prior Consultation". There are many mainstream projects, which could be compared with DSHPP such as Xayaburi. It is not appropriate, not relevant, and even not useful at all to compare DSHPP with Lower Sesan II. It is observed that there is a lack of understanding on the MRC legal framework on the developer side and it is recommended that LNMC instructs the developer to strictly follow the MRC legal framework in order to enhance the efficiency of discussion and negotiation.	The developer noted that the comparison was made solely for the purpose of putting the scale of Don Sahong into perspective.
3	Oxfam Australia: in reference to the review mentioned in the Briefing Note in Support of Public Consultation regarding Prior Consultation for the Proposed Don Sahong Hydropower Project (page 13) regarding other options to be considered; does this	MRC Secretariat responded that 'other options' refers to the two channels the Don Sahong Project will develop to facilitate fish passage. The technical review team began the work based on submitted documents

	refer to the Thakho project?	<p>from the Lao government.</p> <p>Mr. Henrik Larsen confirmed that it does refer to the Thakho project.</p>
4	Green ID Viet Nam: What are the impacts on construction workers (estimated as 3000-4000) on the social, environmental and cultural dimensions of the local area during the construction phase of 4 to 5 years?	<p>Mr. Franz-Dieter Wahl who presented the findings of the Socio-Economic Expert Group (Transboundary Social Impact Assessment) noted that “income activities and labour market” are noted under Regional and transboundary planning as “needed perspectives”.</p> <p>The developer wishes to record that the workforce is expected to peak at something in the order of several hundred workers.</p>
	DFAT Australian Embassy Bangkok: How does Mr Kent Hortle, fisheries expert for the proponent, respond to the points made by the MRC Fisheries Expert Review Team (including on slide 15? How do the proponents respond to the MRC technical review slides in which it is said “The selection of the lowest flow recorded as a basis for the Khone Falls (meaning Phapheng Falls) is arbitrary? How do the proponents respond to the technical review slides in which it is said “It will be difficult to regulate the minimum flows of 800m <sup>3</sup> /s over the Khone Falls (meaning Phapheng Falls) through operating the Don Sahong Project? How do the proponents respond to the slides in which it is said “The degree to which flows entering the Hou Sahong can be effectively managed is unknown? A gated control structure at the channel entrance would serve a number of purposes etc.”?	<p>The project developers replied that a written response will be prepared and published on the company website. The participants will be notified.</p> <p>Mr Boyd provided an explanation of flow control (refer to item 5 under Session 2 above), and confirmed that appropriate technology will be provided to ensure the necessary flow control.</p>
5	Water, Land and Ecosystems Project:  Are there any numbers to specify the difference between ‘potential’ and ‘partial’ impact?	<p>Mr. Gavin Quibell, Consultant to the MRC Secretariat replied that the statement partial, but perhaps significant was based on the following considerations; The Don Sahong Project will not block all fish passage or sediment transport, hence partial. However, whether the loss of fish passage would remove a large proportion of the migrating fish, particular species, or whether the sediment trapping would be permanent is unknown, hence potentially significant. He noted further that there is some guidance on the interpretation of subjective word like ‘significant, substantial,</p>

		etc'. In brief, a significant impact would be one that is not trivial, and can be determined through objective evidence, but not <i>necessarily</i> rising to the level of substantial harm.
6	<p>The Economist: Asked for clarification from expert's report in relation to MRC guidelines that there must be 95% passage allowed, but the report does not clearly address that. Is there a basis for confidence that existing plans can satisfy 95%?</p> <p>"From other reports I have read, there should be a much longer study period before construction, what are the recommendations from the experts on the length of study before the construction begins?"</p>	<p>MRC Fisheries Programme responded: the Fisheries Expert Group (FEG) has completed the Fish Passage and Fisheries Ecology's PDG Cross-Check Form which will be attached to the MRC technical review report. The FEG has provided comments on paragraph No. 61 that the developer should provide effective fish passage upstream and downstream; "95% of the target species under all flow conditions" as follows:</p> <ul style="list-style-type: none"> <li>• Review and details of design of fish passage facilities in EIA is inadequate and does not relate to fish species or guilds.</li> <li>• No appraisal of effectiveness of upstream passage or likelihood of and survival during downstream passage. Developer is committed to 95% passage in EIA but no methodology provided for measurement.</li> </ul> <p>The developer replied that their current monitoring programme is specified to continue a <i>minimum</i> of 10 years, including post construction and operational periods, but it would be continued as long as needed.</p>
7	<p>DFAT, Australian Embassy in Lao: In the briefing note, the transboundary impact is mainly on socio-economic impacts, but there is also a need for elaboration on transboundary environmental impact.</p>	<p>MRC Secretariat Environment Programme responded: There was no transboundary impact assessment made as the developer had no material to assess in terms of transboundary impacts.</p> <p>MRC Secretariat Fisheries Programme Coordinator and member of technical review team said: Our expert group needs more time to do all the assessment and analysis. There is ongoing data collection so if that data is provided to us we can work on that.</p>
8	<p>IUCN: Regarding the data and modelling issues, were you able to take climate change into consideration</p>	<p>The developer replied that: What our models show is what it will look like in 30</p>

	as a factor in your modelling?	years. We are aware of MRC’s extensive work on basin development and climate change scenarios, but predictions related to climate change are that it will not be a significant impact, and therefore the effects were not deemed to affect the project.
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### Session 5: Statements from stakeholders

- Viet Nam River Network
- Save the Mekong Coalition

Due to extended discussion following the previous sessions, it was agreed to move this item to after the lunch break.

The delegation from the NGO Forum, Cambodia was unable to attend due to unexpected complications at the border crossing. The NGO Forum did have a significant input into the statements read by the Mekong Coalition.

### Questions and comments

1	Member TNMC: Did Save the Mekong get any response from any of the four governments in response to their letter sent on 19 September, 2014?	Save the Mekong replied that: There was no official response to the letters sent. However, the Viet Nam National Mekong Committee agreed to hold local consultations and the Southwest Steering Committee and the Women’s Union have agreed to organise these meetings.
2	<p>The Economist:</p> <p>The question on Thai NGOs was directed to member of TNMC.</p> <p>Thai NGOs, are part of the network. Why is it that there seems to be little cooperation between TNMC and Thai NGOs who have reportedly threatened to boycott these events? Why has Thailand changed the name from consultation to “information sharing”? Why is the name different from Cambodia and Viet Nam? Some of the local Thai NGOs have reportedly said that they have not been allowed to take part.</p>	<p>Member of TNMC replied that: The TNMC did extend an invitation to Rak Chiang Khong Coalition to join TNMC in Public Consultation Meeting but unfortunately the Coalition did not accept the invitation. TNMC will continue to extend invitations to Thai NGOs to the future meetings as much and as far as possible. At the end of this month (December, 2014) there will be another TNMC meeting on the Don Sahong Project organised by DWR, and the Department will share with those participants the information gathered from the field visit and this Meeting.</p> <p>From 15-17 December, 2014, there will be public meetings on Don Sahong at two locations in Thailand and all the relevant stakeholders will be invited.</p>
3	Regarding the point above:	VNMC comment: A clarification on participation by VNMC in NGO consultations.

		VNMC plans to hold consultations in Viet Nam at various levels, national and provincial level (local people) and we are cooperating with NGOs in Viet Nam at the local level and will provide information on the project, explain the PNPCA and 1995 Mekong Agreement and what we are doing in supporting the people. By the end of this month will have the second round and will share our own assessment and that of the MRC Secretariat. We try to cooperate with active NGOs and try to reach the local people.
4	Water, Land and Ecosystems programme: A question for VNMC regarding cost benefit analysis: The Diplomat and Thong Vieng News said the government was considering proposals for alterations on dams including financing. Can anyone comment on that process?	There was no comment.

## Session 6: Plenary Session

### Questions and comments

1	DFAT, Australian Embassy in Lao: How does the technical review team plan to revise or update their report?	MRC Secretariat MIWRM Project: Since there has been more information provided to us, and as we only have six months for the process, we will have to take this up with MRC Secretariat management with regard to time frame.
2	Oxfam: Question directed to the project developer: Can you provide further clarification on the status of your contract agreements (construction, purchase, finance)? What is the timeline from the project developer's side?	The answer to these questions lies with the Lao government as we have no control over their internal processes. All the agreements have been submitted and we are waiting for the government's reply. At this time we cannot say for sure what the timeline is.
3	Fisheries Administration Cambodia: Comments  I have carefully reviewed the documents on the Don Sahong Project and listened carefully to presentations during the site visit on 11 December, 2014 and I learnt that the team has not a thorough understanding of fisheries in the Mekong.  The EIA states that the project will have no impact on fisheries on Cambodia. The EIA provides no baseline information on fisheries about the dam site	The developer later replied that they are open to considering any additional information from other sources.

	<p>but at the same time you are monitoring using a variety of fish nets.</p> <p>Dr. Peter Hawkins spent some time during the field trip presentation to dismiss the findings from Dr. Ian Baird who spent more than five years in the Siphandone area. Dr. Baird's findings that Don Sahong is the only channel that allows fish passage is accepted by the global community. The project cannot prove that another channel can accommodate fish passage year around. I agree that there is opportunity to accommodate passage but at this moment it cannot be proven. I saw yesterday the project already going on. You can say that the bridge is not part of the construction of the dam but I can say yes. There is little understanding about fisheries in the Mekong especially migrating species. This is the last opportunity for Mekong citizens to provide comments to build the right hydropower dam in the mainstream. The Council Study and Delta Study and others are conducting a study to try to understand fish passage. Cambodia, with support from the EU and Oxfam Australia are trying to assess fish passage. I would recommend that the project give some time to the Member Countries to finish these studies so that the project can have more knowledge to improve what they refer to as an 'environmentally sound' dam.</p>	<p>The developer later noted that Dr. Baird's findings refer to the period before the regulation of dry season flows by the hydropower operations in China. They noted that the increased dry season flows now enable fish passage in the other channels, and that this had in fact been noted in their monitoring data for 2014.</p>
4	<p>VNMC: comments and clarifications</p> <p>We had a chance to visit the site and the Siphandone area and see what is going on. It is important that we take into account fish and fish passage. We understand that the developer suggests that other channels can be used but we would like to have clarification as to whether the developer checked the channels after modifications and if it is similar to existing channels for fish to migrate.</p> <p>We understand that some channels are not suitable for fish to migrate and would ask for clarification from the developer and the MRC Secretariat technical review.</p>	<p>The developer replied: We do not expect the spill will change the standard score of the MRC. Nor do we see any indication that the water quality will change and with the statement of minimum hours of water stock in the reservoir we do not expect any fluctuations from those already in the record.</p> <p>The Developer has previously noted that the re-distribution of a portion of flow between Khone Falls and Hou Sahong channel does not cause any alteration in the overall Mekong flow downstream of the project site, as the flows recombine.</p> <p>The ability to achieve control of flows (including flow control over Khone Falls) has</p>

	<p>Regarding 'fish friendly' turbines, at this time we do not have enough information to understand how they can enable fish to go through without any damage. We also have concerns regarding flow regimes. We understand that 50% will be diverted to Hou Sahong during the dry season. How do you propose to maintain 800 cubic metres per second at Khone Falls? We have seen no convincing evidence that it can be maintained and this also needs further clarification.</p> <p>Regarding biodiversity: There should be concerns about non-fish species but we are not aware of any information. It is our understanding that the developer has relied a lot on reviews of the literature, but still we need more information. There was a statement by the technical review team regarding 'significant impact on transboundary flow regime' but how significant is it? Define significant. Lack information. We take into heart the concerns from NGOs and local people, especially in the Mekong Delta and elsewhere in Viet Nam.</p>	<p>been explained as above.</p> <p><i>This is addressed in an earlier reply to TNMC</i></p> <p><i>The terminology 'significant' was explained in an earlier reply.</i></p>
5	<p>Member of TNMC: comments on the field visit: It seems that the developer does not regard as important the information from local fishers, which is different from how TNMC addresses local information/knowledge in Thailand. TNMC relies more on local wisdom and even supports some of the local research activities and works closely with local institutions and people who have been living along the river for many years</p>	
6	<p>CNMC: In regard to the transboundary fish migrations mentioned earlier, we would suggest that the developer conducts more analysis for this kind of migration. Specifically, what is the transport rate for migration upstream and downstream because they are concerned about yearly migration. What are the transboundary impacts? Will the project impact the local people downstream related to deep pools? We are still not sure about assessment of water quality, sediment and not satisfied with the data. We suggest a study to identify loss of sedimentation, water quality degradation and their transboundary effects. We also have concerns about the MRC Secretariat assessment and would suggest cumulative impact</p>	<p>MRC Environment Programme replied:</p> <p>In terms of water quality, our models provided examples of certain activities, including accidents that could affect water quality. We do not expect any significant change in the MRC water quality monitoring index. We do not expect the classification to change. There is no expected change in water quality based on general continuous scenarios. Who ensure the water quality pre-during the construction period?</p>

	<p>assessments in the transboundary context. There is also a need for a database to compare current and future migrations.</p>	<p>Dr Toby Coe replied that the river we are dealing with now is different from the river 20 years ago. The dynamics of fish passages in those channels is not the same as before. Regarding alternative fish passage channels besides Hou Sahong, there will be further design and measurement studies to ensure fish passage. Bear in mind that Hou Sahong channel is not passable to all species of fish. Some species are not able to go year-round and others not all the time. Fish passage works will be designed to replicate Hou Sahong.</p> <p>Mr Graeme Boyd noted that some of the information presented today has not been accounted for yet in the MRC Secretariat technical review and provides a solid basis for sediment passage assessment. In response to CNMC’s concerns, information presented earlier is in some parts in conflict with what the MRC Secretariat technical review team presented. The reports are available on the website. There will be no active sediment management needed apart from normal operation of the turbines, no need for excavation of sediment. We are confident that once the MRC Secretariat looks at these reports they will agree. We welcome the MRC Secretariat to communicate closely with us. We appreciate that many people have not yet taken the opportunity to assess the information on our website. The information that is now openly available should clarify many of the questions.</p>
7	<p>DFAT, Australian Embassy Bangkok: What constitutes “officially available information”? Is it putting information on the MRC website? Or is it putting info on both websites? At different times on certain issues the MRC Secretariat seems not sure what they can put up on their website. Whose responsibility is it to get the information to the public?</p> <p>Member of TNMC: As member of Joint Committee</p>	<p>MRCS CEO: in the procedures is clear that information is provided by the proposing country to the MRC Secretariat who has the responsibility to disseminate it. In this case there is new information put forward as the Prior Consultation proceeds. We will follow up with the Lao National Mekong Committee to make sure that the new information is considered officially and seek agreement on how to use it. Regarding</p>



	<p>Working Group, TNMC wonders how TNMC can treat new information from developer that was put up three weeks ago. TNMC would like to hear the views from LNMC colleagues on this. TNMC acknowledges that new and additional information will keep coming but TNMC does not know when the process will start (when the new info will be available), or when will it be available for JCWG and TNMC to be able to take it to the Thai line agencies. The developer also rejected some information and references that have been cited by many people. That the developer mentioned that new information would be published but TNMC does not know when this new information will be available to the public. TNMC questioned how can TNMC and the general public verify the reliability of information from the developer, i.e. the peer reviews process?</p>	<p>what we put on the MRC website, we aim to provide as much as possible. As information becomes available we will, with permission of the Member Countries, put it up on the website. We will work with the Joint Committee Working Group on this issue.</p> <p>Dr. Daovong, LNMC, suggested that it is the decision of individual Member Countries what they consider to be “official” information in addition to what has been informed in June. The consultation is to discuss and share views to move forward not for confirming when information was produced or available.</p>
8	<p>VNMC:</p> <p>Regarding additional information provided by the developer, it should be made clear what information is provided and when it is uploaded.</p> <p>Regarding fish migration findings from five channels, what is the percentage of fish migration through alternative channels? It is important to have more time on studying the proportion of what fish species use alternative channels for migration.</p> <p>Yesterday, the developer showed how they are using eight types of gear to catch fish in five channels. We still lack information on what percent species use the two channels. We need further monitoring of 5-10 years to see how they migrate and how the channel is suitable. We cannot have a premature conclusion. We would like to see longer-term studies of fish migration on both channels.</p>	<p>MRCS Fisheries Programme replied:</p> <p>The main conclusion from the technical review team is that the dam is 200 metres from Hou Xang Pheuak. Only small and medium size fish are passing through Hou Xang Pheuak and the bigger fish use the Hou Sadam.</p> <p>The narrow site of Hou Xang Pheuak will not allow for large fish migration. There are many adjacent channels in the Khone Phapheng where fishes can pass through all year round, these can be used as monitoring channels as well. Protecting Khone Falls by maintaining the natural flow will protect fish passage. Hou Sadam is very small and not suitable as an alternative fish passage. Hou Xang Pheuak does not have sufficient flow to attract fish passage although it could be improved.</p> <p>Dr. Kent Hortle added that fish experts agree to fish passage over the water fall. Fishes cannot pass upstream against the Khone Phapheng falls.</p> <p>It is the responsibility of Ministry of Natural Resources and Environment (MONRE) to consider the document and the baseline on fish migration to be used, not the</p>

		<p>developer.</p> <p>Regarding the turbine type and fish friendly turbines, the information will be on the website shortly.</p> <p>The information on the website is from many independent experts. The company was open to all inputs and comments from all.</p> <p>Regarding the comment from Mr. John Dore, the company is willing to review the information and documents from other experts as well.</p> <p>The Don Sahong Project website has two documents with extensive baseline data. It is the job of the MONRE to review this data and pass judgment on its suitability.</p> <p>Regarding the question on turbines: there has been an update on turbines but information has not yet been put up on the website but will be there soon. What is the process for independent review? A lot of work has been done by independent consultants and LARREC. The organisation responsible for the review is the Lao MONRE. All of the studies need to be published and peer reviewed.</p>
9	<p>Fisheries Administration CNMC:</p> <p>How much impact will there be from the Don Sahong Project on Cambodian fisheries?</p> <p>What collaboration is there to understand how fish pass the Khone Falls? World Fish approached the company on this study one year ago, only after the Don Sahong Project entered the PNPCA process was the company open to the World Fish proposal for collaboration.</p>	<p>The developer replied that the company did try to comply with the Preliminary Design Guidance of MRC. No one knows and no one can know for certain the full effect on fish migration, but the company is trying its best to follow the guidance provided by MRC Secretariat. This guidance mainly refer to providing facilities for fish passage at a dam site which is the focus of the developer’s work – constructing fish passages and monitoring their performance. It is not within the scope or capacity of the developer to monitor</p>

		<p>impacts on fish and fisheries over large scales up and downstream of the dam (as mentioned by many participants), which is properly the role of the national fisheries agencies who have been well-supported by national governments and donors through the MRC to carry out this task. As a result of monitoring the MRC Secretariat should have a lot of data and that can be used to answer these questions. MRC Secretariat Fisheries Programme has been carrying out several transboundary fisheries studies.</p> <p>Regarding the World Fish study, the developer does not control access to the area where many tourists freely travel, however any research work requires Government of Lao PDR permission and a local partner. World Fish only recently got approval from fisheries authorities and formal cooperation with National University of Lao PDR. They are welcome to come to the site and we are happy to cooperate with them.</p> <p>MRC Secretariat has a lot of data and that can be used to answers these questions.</p>
10	<p>National University of Lao PDR:</p> <p>The National University is working directly with the Lao Department of Fisheries monitoring the fish passage. Last year we worked with World Fish in Cambodia to study what species of fish come upstream from Cambodia. The University of Ubon Rajathani also joined this study. We do not know yet the flow and speed of the water or which fish species pass through the falls. We have learnt from fishers in the Khone Falls area how the fish pass through the water fall. It has been seven years that the National University has been working on monitoring fish migration through the Khone Falls and we have some data available for those interested.</p>	

**Session 7: Perspectives and input from participants**

1	<p>Oxfam Australia: Currently the Fish Map is based on a 10 year monitoring programme. Whereas the concession is 25 to 30 years, will the company consider extending the monitoring period throughout the concession period?</p>	<p>The developer replied that ‘yes’, the specification in the documentation was for a ‘<i>minimum</i>’ of 10 years, they would consider extending their monitoring programme if required.</p>
2	<p>The Economist:</p> <p>Would the developer consider moving the date of the launch to address points raised in the consultation process?</p>	<p>The developer replied that the actual date of the launch is still pending reviews and approvals by the Government of Lao PDR and while the date remains uncertain, they are willing to address all the points they are able to within their remit.</p>
3	<p>IUCN Lao PDR: In regard to the Mekong ARCC Programme funded by USAID and considering the impact from climate change, IUCN feels strongly that potential impacts from climate change need to be investigated more thoroughly.</p> <p>Regarding the timeline of the consultation process, what can we expect from the MRC Secretariat team handling the inputs from the public consultation today?</p>	<p>MRCs M-IWRM Project took note and further details will be forthcoming. The Secretariat will provide all information to the Member Countries as soon as possible.</p>
4	<p>DFAT, Australian Embassy Lao PDR:</p> <p>Will the information from the developer and at this public consultation be reviewed and incorporated by the technical review team? Will it be shared with the public?</p>	<p>MRC Secretariat: International Cooperation and Communication Section Chief replied that the technical expert team will review the new technical information and use the technical data to revise the draft technical review report to submit for further discussion at the 3<sup>rd</sup> JCWG, and will share the draft to the public once it is agreed by the JCWG members. The report of this public consultation also follows the same process to share to the public.</p>
5	<p>CNMC noted that: It may be difficult for some of the participants to understand the more technical presentations and because of the limited time available in this consultation, some participants may not have received adequate responses to their questions and comments.</p>	<p>The facilitator apologised for limiting the time available for replies and asked if any of the participants wished to have further response to any of their questions.</p> <p>The facilitator then asked several of the participants to comment on the presentations.</p>

		<p>Participants replied that: The presentations were good and provided ample technical information and appreciated the opportunity at this point in the agenda to ask additional questions and seek further clarification. One participant commented that the site visit was very useful and that seeing the project firsthand had helped them to better understand. The cumulative assessment of Don Sahong is very important and the Council Study and Delta Study can add value to the current studies on Don Sahong. The cumulative assessment should be thorough and over a longer period of time and take into account the Council Study and Delta Study.</p> <p>The Prior Consultation process lasts at least 6 months, we started on 25 July, 2014 and the initial period closes on 25 January, 2015. Construction before that date is not encouraged. VNMC appreciates the information/data provided by developer and would like the Secretariat to take additional information into the review.</p>
6	<p>Member of TNMC commented that slide 19 in the CEO's presentation (S2 MRCS CEO - 12 Dec 2014 in Pakse.pptx) should be revised to show input from the Joint Committee Working Group and report from this public consultation, including the revised technical review report that will go through the 3<sup>rd</sup> Joint Committee Working Group soon. The Council Study and Delta Study are parallel independent studies and the Joint Committee Working Group should consider how to deal with these two studies as technical parts are not easy to synergise.</p> <p>TNMC noted and recorded that in the Meeting the MRC Secretariat team did not provide any response to their last comments.</p>	

## **Part 4: Online submissions via MRC Websites**

The MRC Secretariat has received additional feedback from stakeholders through a section for online submissions in its dedicated Don Sahong Hydropower project webpage. These submissions are available on the following link: <http://www.mrcmekong.org/about-mrc/programmes/initiative-on-sustainable-hydropower/strategic-environmental-assessment-of-mainstream-dams/sea-petitions-and-mrc-responses/>, and can be found in the Annex 4.

## **Annexes**

Annex 1: Agenda for the consultation meeting, 12 December, 2014

Annex 2: Itinerary for the optional field trip, 11 December, 2014

Annex 3: Statements from NGO representatives

Annex 4: Online submissions via MRC Website

Annex 5: List of participants attending the meeting

## Annex 1: Agenda for the consultation meeting, 12 December, 2014

Time	Sessions	Topics
8.30-8.35	Welcome remarks	<ul style="list-style-type: none"> <li>• Objectives and desired outcome of the consultation (as discussed in advance with participant representatives)</li> <li>• Format</li> <li>• Ground rules for participants</li> <li>• How the consultation will be documented.</li> </ul>
8.35-8.40	Introduction By Facilitator	
8.40 - 9.00	Orientation on the MRC's Prior Consultation process By MRC Secretariat CEO, Hans Guttman and representative from the Member Countries.	<ul style="list-style-type: none"> <li>• The purposes of the prior consultation as stipulated in the Mekong Agreement and the PNPCA.</li> <li>• Roles of the MRC, MRC Secretariat and the four Member Countries.</li> <li>• How the MRC carries out the prior consultation process and who is involved in it.</li> <li>• How public opinion and input will be taken into consideration during the process.</li> </ul>
9.00 - 9.15	Questions and Answers session By Facilitator	Mr. Guttman/representative from the Member Countries answer questions from the floor.
9.15 - 10.00	About the Don Sahong Hydropower Project By Project developer/LNMC	<ul style="list-style-type: none"> <li>• Location</li> <li>• Project operations approaches</li> <li>• Key findings from the project's EIA, SIA</li> <li>• Other aspects to be proposed by stakeholders</li> </ul>
10.00 -10.15	Q&A session	
10.15-10.30	Coffee break	
10.30 - 10.50	MRC Technical Review and its initial findings. By MRCS	<ul style="list-style-type: none"> <li>• MRCS initial assessment findings* <ul style="list-style-type: none"> <li>- Key aspects on possible impacts, mitigation measure and monitoring programmes.</li> </ul> </li> <li>• Scope of technical review <ul style="list-style-type: none"> <li>- Approaches</li> <li>- What the technical review will tell us and how it will be used during the process.</li> <li>- Initial findings of technical review.</li> </ul> </li> </ul>
10.50- 11.20	Q&A session	
11.20 - 12.00	Presentations by selected stakeholder groups	<ul style="list-style-type: none"> <li>• Representatives from civil society, NGOs and the Development Partners deliver planned presentations.</li> <li>• MRCS provides feedback to the presentations and responds on key issues.</li> </ul>
12.00-13.30	Lunch Break	



13.30-15.30	Plenary Session By Facilitator	<ul style="list-style-type: none"> <li>• Discussion on topics such as: <ul style="list-style-type: none"> <li>- Feedback on the technical review</li> <li>- Particular issues of concerns</li> <li>- Challenges of the process</li> <li>- Recommendations</li> </ul> </li> </ul>
15.30-15.45	Coffee break	
15.45-16.30	Perspectives and input from participants By Facilitator	<ul style="list-style-type: none"> <li>• Participants may ask additional questions or deliver a statement.</li> </ul>
16.30-17.00	Conclusion By Facilitator	<ul style="list-style-type: none"> <li>• Feedback by the MRC</li> <li>• Points to be incorporated into a stakeholder consultation report.</li> <li>• How outcome of the consultation will be used during the PC, shared with the public and among the participants.</li> <li>• Next steps of the prior consultation process.</li> </ul>

## Annex 2: Itinerary for optional field trip, 11 December, 2014

Timing	Activities	Remark
09:00 - 09:15	Meeting at Khone Phapheng Resort  <i>Note: There will be transportation arranged for those who do not have the transport themselves from Pakse to the meeting point at Khone Phapheng Resort. The transport will be waiting at the Grand Champasak Hotel and will depart for the Khone Phapheng Resort at 6.30am on 11 December 2014.</i>	Registration by MRCS
09:15 - 10:15	Fisheries and Environmental Presentation by MFCB Dr. Peter H Senior EM	Approx: 1hrs Incl.short Q&A
10:30 - 12:00	Visit to Sadam Channel inlet Alternate fish migration path. (Back to Khone Phapheng Resort For Lunch Boxes)	15min Boat trip
12:00 - 13:00	<i>Lunch Break</i>	To be provided to all participants
13:00 - 13:15	“Ban Veunkham port”	Continuing to Veunkham port Approx:15min
13:15 - 13:45	Take boat from Veunkham port to Don Sahong	Site visit Power house location Approx: 25 minutes
13:45 - 15:00	Inspect village for resettlement and Dam location	Approx: 1 hrs
15:00 - 15:30	Take boat from Don Sahong port to Veunkham port	Approx: 25minutes
15:30 - 17:10	Travel back to Pakse	Approx: 2 hrs
17:10	Ending Program	

## **Annex 3: Statements from NGO representatives**

There are two Statements:

- 1) by the Save the Mekong;
- 2) by the Vietnam Rivers Network



**Stop Gambling with  
Our Future:**

**The Save the Mekong Coalition Calls for the Cancellation of Don  
Sahong Dam**

On the occasion of the Mekong River Commission's Regional Public Consultation on the Don Sahong Dam, on December 12, 2014, the Save the Mekong Coalition reiterates our call for the cancellation of the Don Sahong Dam and the protection of the Mekong River. The Don Sahong Dam poses an unacceptable risk to regional fisheries and food security, placing the future of the Mekong River and her people in jeopardy.

The Don Sahong Dam imperils a critical and ecologically unique area of the Mekong River, known for its aquatic biodiversity and rich fisheries. The Hou Sahong Channel on which the Don Sahong Dam would be built is one of the main pathways in the Mekong used year-round by fish migrating between Cambodia, Thailand, Laos and Vietnam. At least 100 species are known to pass through the channel. Blocking the Hou Sahong Channel will have an irreversible impact on fish migration, and consequently on food and livelihood security throughout the Mekong.

The Environmental Impact Assessment for the Don Sahong Dam fails to properly address the threat to regional fisheries. Despite the project being located less than two km from Cambodia; the transboundary impacts of the project have not been adequately considered or assessed.

Construction and operation of the Don Sahong Dam will require a significant change in the hydrology of the area, increasing the Mekong River's dry season flows through the Hou Sahong Channel from 4% to 35%. Such changes would affect the renowned Khone Phapheng Falls and also threaten the globally protected wetlands at the Stung Treng Ramsar site, downstream in Cambodia.

The proposed mitigation measures, upon which the project's success hinges, have never been tested in the Mekong Region. Regional experts have expressed fears that these measures will not be sufficient to mitigate the loss of the Hou Sahong Channel for fish migration. The studies that have been made public by project developers fail to take into account the rich diversity of fish species in the area, each with unique characteristics and migration patterns. Without sufficient baseline data concerning the fish species that migrate up each channel in the Khone Falls area it is not possible to predict what the true impacts of the Don Sahong Dam will be in both Laos and the region. Furthermore, the project developers have not provided information identifying which species the mitigation measures will target or how the design of the channels

has been chosen to mitigate the impacts on each species' migration patterns. The decisions that have been made about the design and operation of the Don Sahong Dam are therefore based on assumptions which gamble with the future of the Mekong River and her people.

There is too much at stake to take such a gamble.

In a letter sent to the Mekong Prime Ministers on September 10, 2014, the Save the Mekong Coalition raised concerns about the legitimacy of the Prior Consultation process for the Don Sahong Dam. We have stressed that no projects, including the Don Sahong Dam, should be submitted for review until critical flaws in the Prior Consultation process that were revealed during the assessment of the Xayaburi Dam are first addressed and until adequate studies, including the Council and Delta Study, have been completed and made public. In the same letter, the Save the Mekong Coalition put forward recommendations for minimum criteria, based on international standards, to enable a participatory and transparent consultation process, which include the need for meaningful consultation to take place before the decision to proceed with a project and require that the process and standard for consultations be the same throughout the region to ensure that the concerns of all countries are raised, recorded and considered equally. It is now clear that these basic requirements have not been met within the national consultations currently underway in Cambodia and Thailand.

The Don Sahong Dam's Prior Consultation process must not be used as a way for Laos to legitimize its actions under the 1995 Mekong Agreement, but instead it should demonstrate a commitment to regional decision-making in good faith, and in the spirit of the Mekong Agreement. It is critical that decisions related to development on the Mekong River mainstream are based on agreement between all four MRC Member Countries, and most importantly, by the millions of people in the region who depend upon the river, its biodiversity and its resources.

The Mekong River is an iconic ecosystem of global importance that supports lives and livelihoods in four countries. Central to the Mekong and her people is the role of the region's rich fisheries. The likely impacts from the Don Sahong Dam on fish migration and the productivity of these fisheries pose an unacceptable risk to food security, lives, livelihoods and the health of millions of people. Furthermore the failures of regional cooperation and unequal costs that will be borne throughout the Mekong River Basin threaten the economic and political stability of the region. A precautionary approach is essential to sustain present and future generations who depend on the Mekong River. Efforts must be made by regional leaders to move towards improved energy planning and more sustainable energy options to ensure the future of the Mekong.

The risks posed by the Don Sahong Dam are avoidable. **We therefore call on the Lao government to immediately cancel the Don Sahong Dam, and for the Cambodian, Thai and Vietnamese governments to take necessary actions to uphold their own responsibilities towards the protection of the Mekong River and its people. Together, the Mekong leaders must take immediate steps to improve regional cooperation and to ensure the long-term protection of the vital resources within the Mekong River.**



## **The governments of Mekong River basin countries should listen to our people!**

Following the PNPCA roadmap applied for Donsahong dam project

Using available information in MRC's website for the consultation process of Donsahong dam project

Vietnam Rivers Network's members and partners have organized a number of activities to collect the comments and opinions from Mekong Delta people in Vietnam regarding the proposed dam Donsahong from November to December 2014. 15 consultation workshops have been held in the Mekong Delta with the participation of thousand people including grass-root farmers, women and representatives of Mekong Delta people through Women and Farmers Union from 12 provinces in the Delta. It was the first time that community people in the Mekong Delta heard about this dam and others proposed in the mainstream of the Mekong river. 100% participants shared big concerns about the potential transboundary impacts caused by Donsahong dam and others proposed in the mainstream of Mekong River on water flow mechanism, environment, fish migration, and sediment consequently they will affect their livelihoods, jobs, and living conditions for current and future generations. According to the Famer Union's representative in Chau Thanh District, Tien Giang Province, Mekong River is a shared water resource and common asset among Mekong countries. It is not proper to say that the river belongs to any national sovereignty. Using water from Mekong River by one country is not only a national decision itself and it is not acceptable if this water use do harm the other countries. It is similar that it is unacceptable if an upstream country throws the trash into the river and the downstream countries suffer from that? Once the dam was built, there would be no solution to reverse. Well learning from national and international experiences related to dam development, 100% participants have insisted opposing the Don Sahong dam. Then the people ask the governments in the Mekong Region to listen to public opinions to respect the nature, keep free flowing Mekong river for sustainable development for people. Mekong Delta people also share concern that the Lao's friends will also have a lot of impacts from this kind of development and appeal Lao government to cancel Donsahong project and delay the decision on other proposed mainstream dams for at least 10 years for further studies to avoid serious irreversible effects on locals' lives and livelihood and destroying the mighty Mekong river.

On the other hand, there are more than 300 people expressing their views of do not agree with the construction of Don Sahong hydropower in the online consultation [donsahong.tk](http://donsahong.tk) implemented by VRN.

## Annex 4 – Online submissions via MRC Website

The MRC Secretariat has received ten online submissions as statement below:

- 1) From Save the Mekong – “ Stop Gambling with Our Future: the Save the Mekong Coalition Calls for the Cancellation of Don Sahong Dam” – the same Statement appeared in the Annex 3 above.
- 2) From Viet Nam Rivers Network – “ The governments of Mekong River basin countries should listen to our people!”, the same Statement appeared in the Annex 3 above.
- 3) From Rivers Coalition in Cambodia (RCC) and other NGOs/INGOs – NGOs’ Joint Statement on Concerns about *Procedures for Notification, Prior Consultation and Agreement (PNPCA)* for Don Sahong Hydropower Project
- 4) From Representatives of Rivers Coalition in Cambodia (RCC) and Tonle Sap and Mekong Communities – Open letter to Prime Ministers of the four MRC Member Countries, dated 01 April 2014
- 5) From Save the Mekong – “ Statement of Save The Mekong Coalition – *Mekong Mainstream Dams Are a Major Transboundary Threat to the Region’s Food Security and People: Civil Society Calls Upon Prime Ministers to Cancel Mainstream Dams*”, dated 25 June 2014
- 6) From Save the Mekong – letter/statement to the Prime Ministers of the four MRC Member Countries regarding Concerns on Don Sahong Dam Prior Consultation Process, dated 10 September 2014
- 7) From Mekong Watch – “ Comments on Don Sahong Dam’s 2013 Environmental Impact Assessment”, dated December 2014
- 8) From Dr. Alan Potkin, Team Leader of the Digital Conservation Facility, Lao PDR – Upstream development alters Mekong water levels, dated 20 December 2014
- 9) From Oxfam – “ Oxfam submission to the Mekong River Commission (MRC) for the Don Sahong Hydropower Project Prior Consultation Process”, dated 21 January 2015
- 10) From Fauna and Flora International, a Statement dated 22 January 2015

# NGOs' Joint Statement on Concerns about *Procedures for Notification, Prior Consultation and Agreement (PNPCA)* for Don Sahong Hydropower Project



វេទិកាសម្រាប់អង្គការចម្រើនសង្គមកម្ពុជា អង្គការអង្គការ  
*The NGO Forum on Cambodia*  
 ធ្វើការរួមគ្នាដើម្បីការប្រែប្រួលវិជ្ជមាន  
*Working Together for Positive Change*

The Rivers Coalition Cambodia (RCC), together with international conservation groups Conservation International (CI), Oxfam, World Wide Fund for Nature (WWF), and other 15 local NGOs and International NGOs (INGOs) hereby raise our strong concerns over the Procedures for Notification, Prior Consultation and Agreement (PNPCA) process for the Don Sahong Hydropower Project (DSHPP).



With this statement, our joint concerns were shared to the National Consultation Meeting on Don Sahong Hydropower Project, on 12 November 2014, at the Phnom Penh Hotel, in Cambodia.



### Background

"Prior Consultation" is a key component of the Mekong River Commission's (MRC) *Procedures for Notification, Prior Consultation and Agreement (PNPCA)* process, which forms the basis of the 1995 Mekong River Agreement between Cambodia, Laos, Thailand and Vietnam, meant to govern shared use of the trans-boundary Mekong River. As part of the Agreement, infrastructure projects that have transboundary impacts on water resources planned on the Lower Mekong mainstream must go through the full PNPCA process prior to any construction taking place.



However, this process has failed since Lao PDR forged ahead with the construction of the Xayaburi dam in 2012 despite strong and clear feedback from MRC governments against the construction of the dam after consultation. Since then, clear definitions and agreements on the MRC processes have not been successfully re-established, and the PNPCA has remained fractured.



### Severe Problems with the PNPCA Process for Don Sahong Hydropower Project

As members of civil society, the NGOs undersigned share strong concerns about the following problems with the Don Sahong dam:

- 1 The potential negative impacts of the DSHPP to Cambodian communities, the environment and biodiversity are potentially very significant, and we do not believe the precautionary principle has been sufficiently applied.
- 2 There is a lack of independent, science-based and *trans-boundary* social and environmental impact assessments (SEIA) for the Don Sahong dam. There is an urgent need for a study conducted by experts independent to the project developer, on the trans-boundary potential impacts for DSHPP, to cross-reference with the only EIA that is commissioned by the dam developer Mega First Corporation Berhad (MFCB).



**Oxfam**







- 3 Mitigation measures have been assessed by three international fish passage experts at the request of NGOs. They concluded that the studies are not up to international standards, and that fish passage solutions have not been demonstrated.<sup>1</sup>
- 4 The mitigation measures that Mega First claimed to have developed have not been tested nor proven to work. Critically, the fish bypass is simply mentioned but not justified by previous success cases or demonstrations that it can work in the particular context of the DSHP. This should be a requirement in the Prior Consultation.
- 5 The scope and expected outcome of the prior consultation process has not been clearly communicated. It is not clear what the consultation entails, and what we can hope for as a result if we participate.
- 6 There was no representation from DSHP's dam developer to attend the Consultation workshops at sub-national and national level to present details of the project, hence evading their responsibility to ensure that the participants were clear on this project regarding to project documents, mitigation measurements and other studies.
- 7 The consultation process failed to address more sustainable options, such as the Thako Water Diversion Project, which would generate similar amount of electricity, at a cheaper price, and with far lesser impact on fisheries and dolphins.
- 8 Repeatedly, the Government of Lao & Mega First have insisted publicly<sup>2</sup> that the Don Sahong project would be constructed regardless of the outcome of the consultation. While the PNPCA process is still taking place, preliminary construction to prepare for building the dam has not stopped - this is going against the principles of the PNPCA Without handling the disruptive position of the project proponents, the ongoing process cannot be meaningful.
- 9 Provincial-level consultations<sup>3</sup> in Cambodia have largely failed their core purpose of helping participants to understand the project, its implications and discussions fully, which were too technical and complex at many points. Specifically, printed documents are mostly in English. Both presentations and printed documents contained many technical words that were not properly explained to the participants. Multiple participants gave feedback that they could not fully understand the presentation. Presentations were also rushed through. Not enough time was given for feedback and/or questions from participants to clarify parts they did not understand, leading to further confusion.
- 10 Representation of "multiple stakeholders" was not meaningfully achieved, running the danger of appearing as though local communities have been adequately informed and consulted, when they have not. Local community members were especially under-represented. Specifically, out of about 80 invited participants, only six were local community members, each from different provinces Only six NGO representatives were invited out of more than 80 participants. Yet, organisers referred to them as organisations representing civil society along the entire Mekong River.

<sup>1</sup> "SUMMARY OF SCIENTIFIC REVIEWS FROM THREE INTERNATIONAL FISH PASSAGE EXPERTS ON THE DON SAHONG DAM EIA AND TECHNICAL REPORTS RELATED TO PROJECT DESIGN AND MITIGATION MEASURES, Feb 2014. Download at [http://awsassets.panda.org/downloads/wwf\\_scientific\\_review\\_by\\_3\\_fish\\_passage\\_experts\\_finalrevised12mar.pdf](http://awsassets.panda.org/downloads/wwf_scientific_review_by_3_fish_passage_experts_finalrevised12mar.pdf)

<sup>2</sup> Laos is acting responsibly on Mekong dam project, Viraponh Viravong, 24 Oct 2014, The Nation.

<http://www.nationmultimedia.com/opinion/Laos-is-acting-responsibly-on-Mekong-dam-project-30246103.html>

<sup>3</sup> Sub-national level consultation workshops were held separately in two provinces - Stung Treng on 16-18 Oct and in Battambang on 30-31 Oct, 2014.

- 11 Very little time and no resources were provided for participants to process the workshop documents and prepare for comprehensive and meaningful feedback at sub-national consultation. Documents were sent out only 3 days before, giving no time for NGOs and communities to conduct feedback from members. Invited representatives were not provided any resources or assistance to disseminate the information prior to the workshop.



**NGOs Recommendations to the Mekong River Commission:**

- 1 Enforce immediate suspension of construction for Don Sahong dam, including preliminary construction of roads and bridges until all project documents and further assessments on impact studies have satisfied concerns of all stakeholders, including MRC governments, civil society and local communities of the Lower Mekong region.t
- 2 Ensure all project documents on the DSHPP are shared in the written and spoken national language of the country in consultation, and are disseminated 30 days in advance.
- 3 Conduct a separate, independent and trans-boundary EIA, with greater focus given to trans-boundary fisheries impacts and impact on dolphins in deep pools below the dam.
- 4 Consider existing alternative options such as the Thako Water Diversion Project that has far lesser impact than DSHPP and can yield about the same amount of electricity..<sup>4</sup>
- 5 Representation of NGOs and local communities should be substantial at consultation workshops.
- 6 Representatives of communities should have access to independent qualified experts to support them throughout the consultation process.
- 7 Facilitate meaningful prior public consultation in advance to sub-national and national level consultations. For example, in Cambodia, there should be commune-level consultations to adequately reach out to potentially affected communities, inform them about the potential dam and collect their feedback.
- 8 All concerns and suggestions of CSOs and communities should be duly noted in all consultation processes, and shared in official reports for all participants to review and provide feedback. These recorded concerns and suggestions must be taken into consideration in all decision-making processes for the Don Sahong Hydropower Project.
- 9 The MRC and the member governments should clearly identify the objectives and criteria for PNPCA before the consultation begins.
- 10 Communicate to participants a clear process, enough time in advance, indicating what would be their role and level of engagement, expected outcome of the consultation with clear timing for each step and a transparent monitoring system.
- 11 Prior Consultation process should not conclude until trans-boundary studies, further impact assessments have been completed.
- 12 All of the Lower Mekong countries need to agree on a same understanding of the procedures under the 1995 Mekong Agreement, and strictly respect their implementation.



<sup>4</sup> Don Sahong Dam - Sustainable Solutions Exist, Jan 2014.  
[http://awsassets.panda.org/downloads/alternative\\_to\\_don\\_sahong\\_\\_\\_thako\\_project.pdf](http://awsassets.panda.org/downloads/alternative_to_don_sahong___thako_project.pdf)



**Endorsement by Rivers Coalition in Cambodia (RCC) and other NGOs/INGOs:**

- The NGO Forum on Cambodia (NGOF)
- 3S Rivers Protection Network (3SPN)
- Fisheries Action Coalition Team (FACT)
- Culture and Environment Preservation Association (CEPA)
- My Village Organization (MVi)
- Conservation International (CI)
- World Wide Fund for Nature (WWF)
- Oxfam
- Cambodian Volunteers for Society (CVS)
- Save Vulnerables Cambodia (SVC)
- Community Economy Development (CED)
- Cambodian Human Rights and Development Association (ADHOC)
- Khmer Farmer's Association (KFA)
- Northeast Rural Development Organization (NRD)
- Ponlok Khmer (PKH)
- Cambodian Rural Development Team (CRDT)
- Community Legal Education Center (CLEC)
- Mlub Prumvihearhor Center (MPC)
- Environmental Cooperation and Tourism Organization (CETO)
- Conservation and Development on Cambodia (CDCam)
- EcoSun Cambodia
- Action For Development (AFD)
- Heinrich Böll Stiftung Cambodia (HBS)

**Cc:**

- Ministry of Water Resources and Meteorology (MOWRAM)
- Cambodia National Mekong Committee (CNMC)
- Lao National Mekong Committee (LNMC)
- Vietnam National Mekong Committee (VNMC)
- Thai National Mekong Committee (TNMC)
- Mekong River Commission (MRC)
- National Assembly (NA)
- 3<sup>rd</sup> Committee of National Assembly
- Ministry of Mine and Energy (MoME)
- Ministry of Environment (MoE)
- Ministry of Agriculture, Forestry, and Fisheries (MAFF)
- Ministry of Tourism (MoT)
- Ministry of Rural Development (MRD)
- Cambodia Development Council (CDC)
- Ministry of Economic and Finance (MEF)
- Ministry of Interior (MoI)
- Ministry of Women Affair (MoWA)
- Ministry of Foreign Affair and International Cooperation
- Development Partners
- International and National Media

**For more information, contact to:**

1. Dr. Tek Vannara, NGOF's ED at 012 793489, [vannara@ngoforum.org.kh](mailto:vannara@ngoforum.org.kh)
2. Mr. Chhith Sam Ath, WWF's CD at 012 928585, [SamAth.Chhith@wwfgreatermekong.org](mailto:SamAth.Chhith@wwfgreatermekong.org)

01 April 2014

**OPEN LETTER TO:**

- **Prime Minister of Royal Government of Cambodia**
- **Prime Minister of Vietnam**
- **Prime Minister of Royal Government of Thailand**
- **Prime Minister of Lao-PDR**

**Subject:** Call to halt construction of Don Sahong Dam and stop making any development on the Mekong Mainstream Dam

We would like to inform that the 260 MW Don Sahong Dam is one of eleven hydropower projects currently being and proposed for construction on the lower Mekong River after Xayaburi. It is located two kilometres from the Lao-Cambodian border in Champasak Province, Lao PDR. Electricity from Don Sahong dam is planned for export to Thailand. If the dam built, it will block the Hou Sahong channel, one of the main channels that comprise the Khone Falls section on the Mekong. This Mega First Corporation Berhad (MFCB) of Malaysia is the main investor.

In October 2013, Lao PDR notified the Mekong River Commission (MRC) that the Don Sahong Dam is “not on the Mekong mainstream<sup>1</sup>” which only needs to engage the “prior notification” process instead of the “prior consultation” process. In contrast, the MRC Secretariat has stated “the Don Sahong was a mainstream dam”<sup>2</sup>, this includes the Basin Development Plan and the Strategic Environmental Assessment of the mainstream dams, all documents that were endorsed by the Government of Lao. To date, there has been no genuine effort to meaningfully consult Cambodian government authorities or affected communities downstream in Cambodia. According to the site visit on Don Sahong Dam Site and the meeting with government of Lower Mekong Countries, Development Partners, and Scientists during 11-12 March 2014, we as the CSOs representative have observed as following:

1. No in-depth study on fishery resources, fish migration from the lower to upper Mekong River especially in the Si Phandon and Ramsar site, fish passage, and Irrawaddy dolphin.
2. No Prior Notification Procedure Consent and Agreement (PNPCA) and Strategic Environmental Assessment (SEA) in the downstream countries
3. No Transboundary Environmental Impact Assessment (Tran-EIA) in Cambodia as well as in the Mekong Delta

The recent study by Inland Fishery Research and Development Institute (IFReDI) of Fishery Department of Ministry of Agriculture, Forestry, and Fishery (MAFF) highlights changes in availability of inland

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<sup>1</sup> Mekong River Commission Secretariate. 03 Oct 2013. Lao PDR submits notification on Don Sahong Hydropower Project (<http://www.mrcmekong.org/news-and-events/news/lao-pdr-submits-notification-on-don-sahong-hydropower-project/>)

<sup>2</sup> Mekong River Commission Secretariate. 2007. Environmental Impact Assessment Report Don Sahong Hydropower Project, Lao PDR. Mekong River Commission Secretariat, Vientiane, Lao PDR, 19 November 2007.

fisheries due to the Mainstream Hydropower development is likely to have serious negative impacts on food and nutrition security and public health. Also, the finding of the research on “Tonle Sap Now and in the Future” illustrated that hydropower dam development in the Mekong Mainstream will have major environmental, social, and economic impact to the Tonle Sap System<sup>3</sup>.

For this reason, we, the Rivers Coalition in Cambodia (RCC) and Tonle Sap and Mekong community representatives (including thumbprints) would like to inform the four Prime Ministers of the Lower Mekong Countries about our campaign against this dam. We have conducted national workshop about the dam, engaged in radio talk show, held press conferences at a national and international media to show our concerns to relevant stakeholders including ASEAN leaders recently in Yangon, Myanmar to urge them to reconsider the development of the Mekong Mainstream Dams and to stop Don Sahong Dam and stop making any decision on the Mekong Mainstream Dam.

Please Sam Dech, Excellencies of the four governments of the Lower Mekong countries accept our highest regards.

Respectfully,

**Representatives of Rivers Coalition in Cambodia (RCC) and Tonle Sap and Mekong communities:**

The NGO Forum on Cambodia (NGOF)

3S Rivers Protection Network (3SPN)

Fisheries Action Coalition Team (FACT)

Culture and Environment Preservation Association (CEPA)

My Village Organization (MVi)

Cambodian Volunteers for Society (CVS)

Save Vulnerables Cambodia (SVC)

Community Economy Development (CED)

Cambodian Human Rights and Development Association (ADHOC)

Khmer Farmer’s Association (KFA)

Northeast Rural Development Organization (NRD)

Ponlok Khmer

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<sup>3</sup> TSA & SNEC., 2013. Tonle Sap now and in the future?, Final report of the Exploring Tonle Sap Future study, Aalto University and 100Gen Ltd. With Hatfield Consultants Partnership, VU University Amsterdam, EIA Ltd. And institute of Technology of Cambodia, in partnership with Tonle Sap Authority and Supreme National Economic Council. Water and Development Publication WD-11, Aalto University, Espoo, Finland.

Mlub Prumvihearthor Center (MPC)

Enviromental Cooperation and Tourism Organization (CETO)

Cambodian Rural Development Team (CRDT)

Conservation and Developmnet on Cambodia (CDCam)

EcoSun Cambodia

Tonle Sap Community representative

Mekong Community representative

Cc:

- Ministry of Water Resources and Meteorology (MOWRAM)
- Cambodia National Mekong Committee (CNMC)
- Lao National Mekong Committee (LNMC)
- Vietnam National Mekong Committee (VNMC)
- Thai National Mekong Committee (TNMC)
- Mekong River Commission (MRC)
- Ministry of Mine and Energy (MoME)
- Ministry of Environment (MoE)
- Ministry of Tourism (MoT)
- Ministry of Agriculture, Forestry, and Fisheries (MAFF)
- Ministry of Women Affair (MoWA)
- Development Partners (DPs)
- Local and International Media



## **Statement of Save The Mekong Coalition**

### ***Mekong Mainstream Dams Are a Major Transboundary Threat to the***

### ***Region's Food Security and People:***

### ***Civil Society Calls Upon Prime Ministers to Cancel Mainstream Dams***

On the occasion of the 20<sup>th</sup> Meeting of the Mekong River Commission's Council to be held on June 26<sup>th</sup> in Bangkok, Thailand, the Save the Mekong coalition calls upon the Prime Ministers of Cambodia, Lao PDR, Thailand and Vietnam to urgently work together to address the threat posed by a cascade of eleven Mekong mainstream dams to the region's food security and people. Regional leaders must take action to cancel the planned projects, including the Xayaburi and Don Sahong dams, and ensure that future decisions over the shared river are based on scientific knowledge, transboundary impact assessment, and respect for the rights of all riparian nations and the public to a transparent and participatory decision-making process.

As the world's largest inland freshwater fishery, the Mekong River feeds more than 60 million people living within the basin, and the river's extraordinary aquatic biodiversity is second only to the Amazon. The river's connectivity and flood-drought cycles are essential for maintaining the river's rich ecology, fisheries and the sediment balance necessary for the sustainable production of food crops on its fertile floodplains. The Mekong River Commission's 2010 Strategic Environmental Assessment warned of severe environmental, social and cultural threats posed by the dams, the difficulties in mitigating harm to fisheries, and the significant knowledge gaps that hinder informed decision-making. Subsequent studies have highlighted the need for improved energy sector planning and the utilization of more sustainable energy options to achieve the region's development needs.

It is critical that the Mekong River Commission (MRC) and its member countries fully recognize the gravity of the situation facing the Mekong and immediately address the threat posed by the Mekong mainstream dams and the MRC's own failures to effectively ensure regional-decision making over these projects. Since 2010, ongoing regional deliberations over whether to construct the mainstream dams have exposed significant ambiguities and problems in the process of governing the shared river and balancing the needs and concerns of upstream and downstream countries. Despite requests for further study and consultation by the governments of Cambodia, Thailand and Vietnam, as well as calls by Cambodia and Vietnam for a ten year deferment in decision-making, construction of the Xayaburi and Don Sahong dams is already underway in Lao PDR. The failure of the MRC to ensure cooperation amongst the four governments

according to the terms of the 1995 Mekong Agreement, risks escalation into a more severe crisis once the dams' transboundary impacts are felt.

Over the past six years, widespread public opposition to the Mekong mainstream dams has been expressed nationally, regionally and internationally through petitions and letters to regional governments and the MRC, yet construction on planned projects has continued unabated.

The Save the Mekong coalition continues to stand opposed to the cascade of eleven mainstream dams due to the irreversible cross-border impacts the projects will have on an iconic river that millions of people in the region depend on for their livelihoods and lifeblood.

Informed decisions over these dams cannot be made unless the projects are immediately halted and the necessary studies completed to assess the full impacts throughout the region. Given the severity of the threat posed by the Mekong mainstream dams, regional leaders must take responsibility--and hold each other accountable—for immediate dialogue and action. We respectfully call on regional leaders to prioritize deliberations over the Mekong mainstream dams and ensure they take center-stage during this week's Council meeting. We also demand that the Government of Lao PDR immediately stop all construction of the Xayaburi and Don Sahong projects, and respect the riparian rights of neighboring countries and all peoples dependent on the river and its resources to the robust consultations they are entitled to under international law. Together, we must work to Save the Mekong, as there has never been a more critical time.

Endorsed by:

Both Ends, The Netherlands  
Cambodia Volunteers for Society, Cambodia  
Cambodian Rural Development Team, Cambodia  
Chiang Kong Conservation Group, Thailand  
Community Economic Development, Cambodia  
Community Resource Centre, Thailand  
Corner House, United Kingdom  
Earthrights International, USA  
Ecosun Cambodia, Cambodia  
Fisheries Action Coalition Team, Cambodia  
Focus on the Global South, Thailand  
Green ID, Vietnam  
International Rivers, USA  
Living River Siam, Thailand  
Jesuit Service Cambodia, Cambodia  
Mangrove Action Project, Thailand  
Mekong Monitor Tasmania, Australia  
Mekong Watch, Japan  
Mlup Prum Viheathor Center, Cambodia  
My Village, Cambodia  
Network of Thai People in Eight Mekong Provinces, Thailand



NGO Forum on Cambodia, Cambodia  
PanNature, Vietnam  
Ponlok Khmer, Cambodia  
Probe International, Canada  
REDD-Monitor  
Towards Ecological Recovery and Regional Alliance, Thailand  
Vietnam Rivers Network, Vietnam  
WARECOD, Vietnam  
3S Rivers Protection Network, Cambodia

25 June 2014

**Save the Mekong Coalition**

C/O 409 Soi Rohitsuk (Ratchadapisek Soi 14), Pracharajbampen Road  
Huay Kwang, Bangkok, 10320 THAILAND Tel: (66) 02 691 0718-20 Fax: (66) 02 691 0714  
Email: [info@savethemekong.org](mailto:info@savethemekong.org) Website: [www.savethemekong.org](http://www.savethemekong.org)



September 10, 2014

H.E. Samdech Akkak Moha Sena Padei Techo Hun Sen,  
The Prime Minister of the Kingdom of Cambodia

H.E Thongsing Thammavong,  
The Prime Minister of the Lao People's Democratic Republic

H.E Nguyen Tan Dung,  
The Prime Minister of the Socialist Republic of Vietnam

H.E Prayuth Chan-ocha  
The Prime Minister of the Kingdom of Thailand

**Re: Concerns on Don Sahong Dam Prior Consultation Process**

Your Excellencies,

The Save the Mekong Coalition writes to express our concern regarding the decision-making process for the Don Sahong Dam, in southern Lao PDR. Our major concern relates to the recent submission by the Government of Laos, of the Don Sahong Dam for Prior Consultation under the Procedures for Notification, Prior Consultation and Agreement (PNPCA). We are concerned that, as they stand, the PNPCA procedures cannot allow for a legitimate and participatory consultation process for the Don Sahong Dam, and the project is set to follow the same destructive path of the Xayaburi Dam, bringing further severe impacts to the Mekong and its people.

Many studies have shown that, if built, the Don Sahong Dam will have severe impacts on Mekong fish and their migration throughout the Lower Mekong River Basin.<sup>1</sup> This threatens the food security and livelihoods of millions of people, as well as the economic and political stability of the region, due to increased tension between governments over the failures of regional cooperation. Despite this, Laos has insisted on moving forward with construction on the Don Sahong Dam, and even when submitting the project for Prior Consultation, has made clear its intentions to continue developing the project.<sup>2</sup> Recent media coverage of the status of ongoing construction at the Don Sahong Dam site supports these concerns, as the Government of Laos has claimed that construction has halted, while Mega First

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<sup>1</sup> "The Don Sahong Dam, Potential Impacts on Regional Fish Migrations, Livelihoods, and human health." (Dr. Ian Baird, 2009), "Independent Review of the Don Sahong Dam" International Rivers, February 2014.

<sup>2</sup> Laos 'statement from 20<sup>th</sup> Meeting of the MRC Council

Corporation Berhad, the company responsible for developing the project claims that construction is continuing.<sup>3</sup> Submission of the Don Sahong Dam for Prior Consultation must not be used as a way for Laos to legitimize their actions under the 1995 Mekong Agreement, but rather ensure a true commitment to regional decision-making in good faith, in the spirit of the Mekong Agreement.

It is now widely acknowledged that the Xayaburi Dam's Prior Consultation process was a failure. The limited stakeholder consultation both in number of participants and areas involved excluded many critical voices, including those of local communities in Cambodia, Laos, Thailand and Vietnam. While many groups in Vietnam and Cambodia voiced their dissatisfaction about the lack of participation in the process, affected local communities in Thailand insisted that they were not 'consulted' in the meetings organized in Thailand, and instead only received some initial information. They believe there is no legitimacy in the PNPCHA procedures and continue to say "no" to the Xayaburi Dam.

Those who attended the consultations reported that little or no information was provided about the details and impacts of the project. The final Environmental Impact Assessment (EIA) was not made public, no transboundary impact assessment was carried out, and the dam designs were not complete. The legitimacy of the entire process was undermined when the Governments of Laos and Thailand decided to move forward with construction of the Xayaburi Dam, despite there being no resolution to the Prior Consultation, no response to concerns raised by Cambodia and Vietnam and no Agreement between the four governments to proceed with the project.

On June 24, 2014, Thailand's Supreme Administrative Court accepted a lawsuit filed by villagers in North and Northeastern Thailand who would be affected by the Xayaburi Dam, acknowledging in their ruling the potential transboundary impacts of the Xayaburi Dam and calling for further environmental, health and social impact assessments in Thailand.<sup>4</sup> Recommendations by both Cambodia and Vietnam have called for a delay in further decisions on Mekong mainstream dams until the completion of the MRC Council Study and the Mekong Delta Study. And at the Second Mekong Summit in April this year, Vietnam re-iterated the recommendation of the MRC's 2010 Strategic Environmental Assessment, calling for a 10-year moratorium on all dam building on the Mekong mainstream. Such recommendations demonstrate that decisions over the future of dams on the Mekong mainstream must be based on comprehensive study and understanding of the impacts to all Mekong countries.

Donors to the MRC have also expressed serious concerns about the efficacy and legitimacy of the PNPCHA process, including the Australian Government, who funded the Xayaburi Dam's Prior Consultation process as well as a review of it, and the Danish Government. Recognizing the inadequacies in Xayaburi Dam's Prior Consultation process, the MRC Secretariat has also sought to review the PNPCHA with a view to "considering extension of the six-month PC period, establishing criteria for Agreement after the PC process, and reaching a common understanding of how the PNPCHA should be interpreted in the context of the 1995 Agreement."<sup>5</sup>

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<sup>3</sup> "Lao officials, developers differ over dam status" The Phnom Penh Post, August 20, 2014

<sup>4</sup> "The Xayaburi Dam will be the first of 12 cascade and large scale dams planned for the lower reach of the Mekong. It is widely known that the project may cause impact to the environment, water quality and quantity, the flow of water, ecological balances of the Mekong basin and other transboundary impacts toward riparian countries, particularly local community in the eight riparian provinces in the Kingdom of Thailand which may bear extensive impact on the environmental quality, health, sanitation, livelihood, or affecting any stake related to the community". Ruling from Thailand's Supreme Administrative Court June 24, 2014

<sup>5</sup> Review of Danish aid to the MRC, 2013

Despite the review being proposed more than a year ago, these issues remain unresolved. Yet, the Don Sahong Dam, which poses a critical threat to the future of the Mekong River, is being submitted for Prior Consultation and likely to follow the same failed decision-making process as that of Xayaburi Dam.

Therefore, we call on Mekong leaders to immediately halt the Prior Consultation process for the Don Sahong Dam and address critical flaws in the PNPCA, that act as barriers to participatory and informed consultation and agreement of affected communities, and allow more time for studies on the impacts of mainstream dams to be completed.

The voices of communities must be the priority in any process related to the development of dams on the Mekong River. As the MRC's mandate is not for local Mekong communities, there needs to be clarification on how local communities affected by Mekong dams can meaningfully participate in the decision making process and how their participation will inform decisions made about whether or not a project will proceed. The right of communities to reject a project must be recognized.

The MRC and the member governments have to recognize that, any kind of consultation process with participation of communities and the Mekong public on Mekong dams should at a minimum, include the following criteria, including;

- Consultation must take place before the decision to proceed with a project. No construction should take place and no agreements should be signed during the consultation process.
- Clear criteria for decision making about the design, scope and scale of the project, as well as the ecological viability of the project, should be developed and made public before the consultation. These criteria should be updated based on the information generated through the consultations.
- MRC member governments must clearly state their commitment at the outset of the process, to ensure agreement between all four countries - based on participatory consultation – on how to proceed.
- Sufficient information, including a transboundary EIA and final project designs must be released well in advance of consultations. All relevant information must be made available in the national language of all riparian countries and all materials should be peer reviewed to ensure objectivity.
- It is the responsibility of the National Mekong Committees to ensure the adequate representation of communities during consultations. Every community along the Mekong River must be invited to take part in the consultations. Sufficient resources must be provided by the MRC, its member governments and/or development partners to enable meaningful participation from diverse communities and the Mekong public.
- The responses and concerns raised by communities and the Mekong public must be transparently addressed and clear criteria laid out for how these opinions inform the final decision-making process.
- The process and standard for consultations must be the same throughout the region to ensure that the concerns of all countries are raised, recorded and considered equally; this can be ensured by engaging a third party to oversee and monitor this process.

We, the Save the Mekong Coalition, believe that a healthy Mekong River is vital to the prosperity and sustainability of the region. We call on leaders to urgently consider the existing and future impacts of

dams on the Mekong River and prioritize and protect the rights of Mekong communities to meaningful consultation and participation is regarding dams on the Mekong River.

Yours sincerely,

Both ENDS, The Netherlands  
Burma Rivers Network, Burma  
Child Development Center for Social and Environment in Mekong Basin, Thailand  
Chuenchom Sangarasri Greacen, Palang Thai, Thailand  
Community Economic Development, Cambodia  
Community Resource Centre, Thailand  
Conservation and Recovery in Lampaning River Basin Group, Nong Bua Lamphu province, Thailand  
CRDT, Cambodia  
CSRD, Vietnam  
E-san Human Rights and Peace Information Centre, Thailand  
Earth Rights International, USA  
EcoSun Cambodia, Cambodia  
Finnish Asiatic Society, Finland  
Fisheries Action Coalition Tea, Cambodia  
Focus on the Global South, Thailand  
GreenID, Vietnam  
Information Center for Social Justice, Thailand  
International Rivers, USA  
Living Siam River, Thailand  
Mekong Conservation Group, Pak Cham, Loei, Thailand  
Mekong Monitor Tasmania, Australia  
Mekong People Council Network, Thailand  
Mekong Watch, Japan  
Mekong-Lanna Culture and Natural Resources Conservation Group, Chiang Rai, Thailand  
My Village, Cambodia  
Network of Thai People in Eight Mekong Provinces, Thailand  
NGO Forum, Cambodia  
NGOs Coordinating Committee, Northeastern Region, Thailand  
Northeast of Environment and Natural Resource Network, Thailand  
Northeastern Rural Development, Cambodia  
Northern River Basins Network, Thailand  
PanNature, Vietnam  
People Committee for Livelihood and Community Recovery, Pak Mun, Ubonrachthanee, Thailand  
Ponlok Khmer, Cambodia  
Probe International, Canada  
Rak Chaing Karn Group, Thailand  
Right Protection Center for Natural Resource Management in Lower-Chi River, Thailand

Tamm People Association, Thailand  
Tammun Project, Thailand  
Towards Ecological Recovery and Regional Alliance, Thailand  
The Law and Policy of Sustainable Development Research Center, Vietnam  
Udon Thani Environmental Conservation Group, Thailand  
Vietnam Rivers Network, Vietnam  
WARECOD, Vietnam  
World Rainforest Movement, Uruguay

CC:

**Joint Committee and Council of the Mekong River Commission**

**Mekong River Commission Donors**

**Mekong River Commission Secretariat**

## **Comments on Don Sahong Dam's 2013 Environmental Impact Assessment**

**Mekong Watch<sup>1</sup>**  
**December 2014**

### **Introduction**

There are numerous concerns about the environmental and social impacts of the Don Sahong Dam, planned on the Mekong mainstream, in Champasak Province of southern Laos. The Mekong River is the world's largest fishing ground for freshwater fish, and the dam is to be constructed on the Mekong's HouSahong Channel. This channel is very important as it is the one and only channel in the Khone Falls area that is a year-round fish pathway for migration. It is also located only a few kilometers from the habitat of the Mekong River subpopulation of *Orcaellabrevirostris* (Irrawaddy dolphin), a critically endangered species on IUCN's red list and of which less than 100 remain.

Dam construction on this channel is expected to bring extensive adverse impacts on the ecosystem of the whole Lower Mekong Region (References 1, 2), and economic losses incurred by the fisheries sector are predicted to exceed the economic benefits generated by the dam (Reference 1). Taking these concerns into account, we have compiled these comments regarding the *Don Sahong Hydropower Project, Lao PDR Environmental Impact Assessment, January 2013* (References 4-8), presented by the government of Lao PDR. Comments are mainly regarding impacts on fish and these comments were made based on reviews by fish experts.

From our analysis, we conclude that the EIA for the Don Sahong Dam is insufficient both in terms of scope and survey duration. Much important data and information necessary to implement mitigation measures after dam construction is also lacking.

### **EIA Report Deficiencies**

#### **○ Problematic data collection on fish catches**

- The EIA's studies of fish species are from data of fish catches by fishers in areas near the proposed construction site (see EIA Annex D). While this data is important for understanding the impacts that dam construction will have on the livelihood of fishing communities, it is necessary to conduct scientific studies using ichthyology and fishery science methods in order to understand fish migration patterns and natural resource interannual variability.
- There is insufficient data of fish species and migration during times of high water levels. The EIA seems to rely heavily on fishing using a fish trap called *Lee*. This trap, however, is used only when the water levels are below a certain point at the beginning and end of the raining season. If water levels rise unexpectedly, *Lee* sometimes break. If information was collected primarily from *Lee* catches, data on fish species and migration at times of high water levels has not been sufficiently collected.
- The data is not quantitative. There is no data on catch per unit effort (CPUE), nor on the type of gear/equipment used at each sampling location, though this data is essential for resource abundance monitoring.

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<sup>1</sup>Mekong Watch is a Japanese NGO based in Tokyo. We combine research and advocacy to address and prevent negative environmental and social impacts of development in the Mekong Region. Contact: 3F AOKI Bldg. 1-12-11 Taito, Taito-ku, Tokyo 110-0016, Japan. Email: info@mekongwatch.org

○ **Survey Flaws: Duration of Survey**

- We are seeing unprecedented changes in water levels in the Mekong River basin. Massive floods and record setting droughts have been occurring over the past several years. Large changes in water levels within a single year also make it difficult to determine the impacts on fish resources from just two years of monitoring. For this reason, we feel the report's monitoring duration is insufficient. Even the SEA submitted to the MRC recommends basin-wide studies and proposes a 10 year moratorium on development (Reference 3), and there is clearly not enough information to ensure sustainable natural resource use.
- Fishers decide what fishing methods to use depending on the water levels, so fishing seasons are limited. As for the endangered Mekong giant catfish, they pass through the HouSahong Channel when the water level is highest. When water levels are high, it is not possible to fish using *Lee*, and there are cases (as seen in 2011) when none are caught. Therefore, it is still unclear how large fish, such as the Mekong giant catfish, use the HouSahong Channel for migration.

○ **Survey Flaws: Scope of Monitoring**

- Of the 17 channels of the Khone Falls area, the HouSahong Channel is unique in that it is the only passway through which fish can migrate throughout the entire year. There is no survey taking this into account. Studies on fish species were conducted on only 3 channels and no information is provided on the remaining 14. It is essential to assess what impact blocking the HouSahong Channel would have on all the other channels.

○ **Survey Flaws: Impact of Changing Water Levels Overlooked**

- Fish behavior changes as water levels fluctuate. Also, it can be predicted that water level changes during the dry season in the highly turbid Mekong River are an important factor in the rise and fall in quantity of aquatic plants. There are no studies, however, on this subject.

**Missing Information**

Because studies are insufficient, the following information is missing from the EIA.

- It is known that fish migration in the Mekong River is triggered by increased turbidity and water level changes caused by rains at the end of the dry season (Reference 9). How changes in the amount of water flowing downstream from the HouSahong Channel would impact the migration of fish in the lower stream must be given separate and concrete consideration, but such studies have not been conducted.
- There is no information regarding the HouSahong Channel's effectiveness as a passage for fish in the life history of fish inhabiting the Mekong. To gather such information, data such as species collected by fishers, statistically analyzable numbers of species and their populations, and data such as length, weight, gonad index (gonadal weight) should be recorded.
- It is unclear which species use the HouSahong Channel seasonally or constantly, and for what purposes the Channel is used during what stages of the fish's life. Therefore, there is insufficient data to accurately determine environmental impacts or to consider mitigation measures.



- In the HouSahong Channel area, the water level decreases during the dry season and there is massive growth of algae as sunlight reaches the river bed. These algae are important as food for fish, and they sustain the base of the ecosystem. With dam construction and creation of a reservoir, we can expect to see changes in algae production capacity, but there is no consideration of this point. There is a risk that production capacity of algae at HouSahong Channels will be lost.

### **Environmental Impacts during Construction are Underestimated**

- Impacts of water turbidity on fish during construction is not considered.
- It is planned to dredge the lower HouSadam during the dry season to make a by-pass of the HouSahong Channel. During the dry season, fish such as *Par Soy* use areas downstream of the HouSadam and Mekong confluence as a passageway, and it is possible that water turbidity during construction could have an impact on the run of *Par Soy* and other fish.

### **Environmental Effects after Construction are Underestimated**

- It is questionable whether appropriate management of fishing grounds will be possible after dam operation begins. The report uses the observed decrease in fish catches in the Si Phan Don area as a reason for assuming that the decrease in fish near the proposed construction site is due to overfishing by local people (EIA, p. ix-x). The report then implies that the impacts of the dam will not be serious because the decreased numbers are due to overfishing.

Even if overfishing is actually the reason for decreases in fish catch in recent years, it is not logical to conclude that the dam's impacts would be thereby insignificant, or that fish catch regulations or other means would effectively alleviate dam construction impacts.

As pointed out in prior paragraphs, base line data regarding fishing is currently insufficient and conditions necessary for monitoring sustainable resource use have not been set up. When fish catches decrease, fishers make individual efforts to increase their catches by changing fishing gear or moving to other fishing grounds. If data before dam construction is only of fish catch by fishers, then accurate monitoring of changes in resource abundance is impossible. Therefore, there are big problems with any plan that assumes at this point in time that meaningful fish ground monitoring can be accomplished after dam operation begins.

### **Uncertainty of Mitigation Plans**

- Mitigation Plans for Upstream Run  
It is planned to secure fish migration by modifying the flow of HouXangPheuak and HouXangPheuakNoi, channels that neighbor the HouSahong. Annex D (Reference 8) states that the effectiveness of trial channel flow modifications were confirmed through hearings with fishers. Fishers reported increased catches above the Larne Falls (HouXangPheuak), but reduced catches 3 km upstream of HouXangPheuak. The EIA report concludes that this is an indication of successful fish migration through the modified channel and would therefore mitigate impacts of blocking the HouSahong. (Annex D, p 17-18) We cannot agree that these anecdotal reports of fish catches in a modified channel provide sufficient objective data to conclude that these modifications would mitigate the impacts of obstructing a different channel.

In this way, the validity and reliability of the EIA report comes into question, as it lacks any scientific data for its

evaluation of post-construction impacts. Both channels were only drilled in 2012 and data to verify the impact of modifications has not been compiled yet. Long-term monitoring is needed to determine effectiveness of mitigation measures, but the report not only prematurely evaluates the success of proposed mitigation measures, it claims that implementation of these mitigation measures will even improve the long-term sustainability of fisheries in the Lower Mekong Basin (Annex D p. 23). This is faulty logic and jumping to this conclusion is a critical problem.

- Mitigation Plan for Downstream Run

There is a plan to set up turbines that would enable fish to pass through alive for the downstream run. But the EIA report also mentions that the indicated survival rate of fish passing through the turbines is only available for salmon in North America. It is highly questionable whether mitigation methods for salmon are appropriate for very diverse Mekong River fish. Such mitigation plans should be proposed only after verification of data based on diverse fish species and various characteristics of migration. (Reference 4: EIA p.30)

Salmon only run downstream into the sea after hatching when their size is small. In the case of the Mekong River, it is likely that not only small, newly hatched fish will make their way downstream. The EIA mentions 3 sizes of fish running downstream, based on fish samples from Nakhasan Village Port, and these sizes are considered. The largest, however, is less than 80cm, so this means no consideration is being given to the larger species of Mekong River fish.

Recent studies show that the Mekong giant catfish do not mature unless they grow to a certain size(Personal information. 2014). There are also indications that other fish species that spawn multiple times during their lifetime migrate both up and down the Grete Fall Line (GFL).

- After starting dam operation, Adaptive Management is proposed to monitor and alleviate environmental impacts, and a 10-year study to monitor fisheries is also proposed (Reference 7, Annex C p.41). However, to evaluate the changes in fish resources in Si Phan Don, baseline data is necessary. To collect baseline data also requires long-term studies. As mentioned earlier, the monitoring period for preliminary studies was very short, and there is no quantitative data either. In such condition where baseline data is missing, it is extremely difficult to define standards or targets for mitigation or improvement when the environment changes. To implement Adaptive Management, it is essential to collect scientific data over a certain period prior to dam construction.

## **References**

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- (2) Baird, I.G., The Don Sahong Dam: Potential Impacts on Regional Fish Migrations, Livelihoods and Human Health, August 2009.
- (3) ICEM. MRC Strategic Environmental Assessment (SEA) of Hydropower on the Mekong Mainstream: Summary of the Final Report, Mekong River Commission, 2010.
- (4) Mega First Corporation Berhad., Don Shahong Hydropower Project, Lao PDR Environmental Impact Assessment Final, January 2013.
- (5) Mega First Corporation Berhad., Don Sahong Hydropower Project, Lao PDR (DSHPP) Environmental Management and Monitoring Plan Final, January 2013.
- (6) Mega First Corporation Berhad., Don Sahong Hydropower Project, Lao PDR Environmental & Social Studies,

**Comments on Don Sahong Dam's 2013 Environmental Impact Assessment-Mekong Watch**

Cumulative Impact Assessment Final, January 2013.

- (7) Mega First Corporation Berhad., Don Sahong Hydropower Project (DSHPP) Annex C to the 2013 EIA, Report on Fisheries Study in HouSahong, HouSadam and HouXangPheuak (Fisheries Report 2010), January 2013.
- (8) Mega First Corporation Berhad., Don Sahong Hydropower Project (DSHPP) Annex D to the 2013 EIA, Report on Fisheries Study in HouSahong, HouSadam and HouXangPheuak (2010-2012), (Fisheries Report 2013), January 2013.
- (9) Mekong River Commission., Fish migration triggers in the Lower Mekong Basin and other tropical freshwater systems, MRC Technical Paper No. 14, December 2006.

Here follows below, slightly edited, the text of my 20 December 2014 posting on the "LaoFAB" list server.

Also available online are several interactive eBooks published by the Digital Conservation Facility, Laos on aspects of Mekong Basin hydropower development: providing generally critical analysis of the adequacy, heretofore, of enviro and social assessment reporting, and of post-facto evaluation. The URLs for these are...

[http://www.sethathirath.com/mekong\\_actual\\_outcomes1.final\\_cfp.pdf](http://www.sethathirath.com/mekong_actual_outcomes1.final_cfp.pdf)

[http://www.sethathirath.com/nam\\_phit/digital\\_mekong\\_planning.pdf](http://www.sethathirath.com/nam_phit/digital_mekong_planning.pdf)

[http://www.sethathirath.com/mekong\\_orwell\\_eBook/pak\\_mun\\_homepages.pdf](http://www.sethathirath.com/mekong_orwell_eBook/pak_mun_homepages.pdf)

[http://www.sethathirath.com/mekong\\_fish\\_atlas\\_4.1/welcome.pdf](http://www.sethathirath.com/mekong_fish_atlas_4.1/welcome.pdf)

[http://sethathirath.com/EFDNW\\_UNESCO\\_1.4.1/nongchanh%20interactive/EFDNW\\_poster/nongchanh\\_poster\\_homepage.pdf](http://sethathirath.com/EFDNW_UNESCO_1.4.1/nongchanh%20interactive/EFDNW_poster/nongchanh_poster_homepage.pdf)

Also, the URL for a 5'48" video interview addressing many of these same issues is...

<http://vimeo.com/86935784>

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**Subject: [LaoFAB] Upstream development alters Mekong water levels**

Indeed "now is the time to separate fact from fiction"...

Notwithstanding his Googleable scientific publications being exclusively in quantitative algology, rather than in any aspect of ichthyology (not least fish taxonomy, physiology, and reproductive or migratory behaviors), I had consistently argued that we should accept that Dr Peter Hawkins, Don Sahong's Environmental Manager, was speaking and acting in good faith until proven otherwise...

Until this latest announcement by him that the altered dry season hydrology above and below Siphandone, following the new release regime from the Lançang Jiang cascade of hydropower dams in Yunnan PRC, will now make it "easier for fish to migrate" through alternate channels other than Hou Sahong during the dry season.

Well, maybe yes and maybe no.

According to years of fieldwork conducted there by Dr Tyson Roberts and Profs. Ian Baird and Water Rainboth, amongst others, no less than 150 species of fish transit through, or are resident, in Siphandone. Other than their basic taxonomy, almost nothing is known in sufficient empirical detail about any of them to understand exactly what ecological and behavioral cues initiate bi-directional migration and successful

reproduction: Water temperature? Current velocity and/or stream stage? Phases of the moon? Subtle chemical alterations? Angle of the sun in the sky/polarization of insolation? How much change in elevation per unit of lineal distance could be encompassed within a particular species' genetically-determined metabolic parameters and swimming musculature to still be a manageable pathway?

All essentially unknown!

The planet's best understood migratory fishes are the *salmonidae* of the northern hemisphere, which in any given inland waterway probably never exceed four or five different species having themselves much in common. Yet even now ichthyologists are far from certain over exactly how salmonids are capable of navigating to, and infallibly identifying, precisely that reach of river /tributary wherein they were originally spawned, perhaps even a decade earlier, with most of those intervening years as adults spent offshore in the oceans

And if any or all of that that were known in exact and correct detail about one or two or three of the most economically and nutritionally important Mekong species, there would yet be another 140 species, at least, which might be responding to completely different sets of stimulæ and environmental cues.

I would be delighted to have these assertions proven false by aquatic ecologists holding credible expertise far greater than my own. Come out come out wherever you are!

Once again, I would note that available to whomever might successfully navigate far upstream into several of our interactive eBooks, notably "Mekong-Orwell" —mostly about the Pak Mun debacle but also addressing Xayaboury and Don Sahong— there are linked online videos showing the rather underdeveloped state-of-the-art of "fish friendly" turbines, and showing the general impassibility of even a 70cm artificial obstruction erected across the migratory pathways of one of the most robust and powerful N. American fish species, but one which lacks any evolutionary history of jumping.

Thanks as always, for all due consideration.

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## **Oxfam submission to the Mekong River Commission (MRC) for the Don Sahong Hydropower Project Prior Consultation Process**

**21 January 2015**

Oxfam is a world-wide development organisation that mobilises the power of people against poverty. We are a confederation of 17 organisations working together in more than 90 countries, including the Lower Mekong countries. Oxfam has longstanding programming experience in the Mekong region working with civil society actors and governments, and through its regional water governance program has monitored developments affecting water resource management and governance, including the proposed Don Sahong Dam. Oxfam's water governance program supports the greater inclusion of civil society in water resource governance and decision making to help achieve the overarching goal that communities will be better able to realise sustainable livelihoods.

This submission draws on Oxfam staff and partner participation in sub-national and national consultations in Cambodia and Vietnam, as well as the regional public consultation convened by the Mekong River Commission (MRC) Secretariat as part of the Don Sahong Dam Prior Consultation process.

### **Oxfam's key statements/positions on Don Sahong Dam and the PNPCA**

- Don Sahong Dam poses a major risk to Mekong fisheries and consequently people's food and livelihood security in the basin
- There are still many concerns and uncertainties over the effectiveness of the project developer's proposed mitigation measures.
- There should be a comprehensive transboundary impact assessment, with input from – and participation of – diverse stakeholders in the study design and implementation
- Prior Consultation for the Don Sahong Dam should be improved and extended as the time is inadequate for consideration of other key studies and for meaningful consultation with affected communities and other stakeholders. According to PNPCA, the timeframe can be extended by MRC Joint Committee.
- Oxfam believes that work on the Don Sahong Dam should be halted while the above processes (extension of prior consultation and further studies, including transboundary impact assessment, MRC Council Study and the Mekong Delta Study) are undertaken

### **Background and explanation of key statements**

#### **Don Sahong Dam poses a major risk to Mekong fisheries and consequently people's food and livelihood security in the basin**

Hou Sahong channel, which would be blocked by the Don Sahong Dam, is widely documented as being the main, if not the only, channel in Khone Falls, which provides year-round route for migrating fish. As MRCS initial assessment report on Don Sahong (January 2014) highlights, Hou Sahong is "critically important for basin-wide fish migration and, thus, the long-term sustainability of migratory fish species in the Lower Mekong Basin."<sup>1</sup> By blocking this critically important migration route for fish,

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<sup>1</sup> MRC Secretariat's Initial Assessment Report On the Don Sahong Hydropower Project, January 2014, p14. Available at: <http://www.mrcmekong.org/assets/Publications/Consultations/Don-Sahong/MRCS-Initial-Assessment-on-Don-Sahong-Hydropower-Project-2014-final.pdf>

the Don Sahong Dam poses a major risk to Mekong fisheries and consequently people's food and livelihood security in the basin.

Contributing 47 to 80 % of animal protein in-take, fish and aquatic products are critical to people's food and nutrition security in Mekong Basin. Thus significant declines in fisheries would have adverse impacts, particularly on the poor "who depend proportionately more on fish (and other aquatic animal) consumption than other groups."<sup>2</sup>

Fisheries is particularly important for Cambodia, where inland fisheries contribute nearly 12 per cent of Cambodia's GDP and are a vital source of food, nutrition and income. An Oxfam-supported study by the Inland Fisheries Research and Development Institute (IFReDI), Cambodia (2013) found changes in availability of fish and aquatic resources are likely to have major negative impacts in terms of nutrition and income, and also social equity.<sup>3</sup> Furthermore, replacement measures (e.g. livestock and aquaculture) will only partially compensate for loss of wild fisheries and likely be more expensive, and less accessible to the poor.<sup>4</sup>

**There are still many concerns and uncertainties over the effectiveness of the project developer's proposed mitigation measures.**

A key fisheries impact mitigation measure is to modify two nearby channels – HouSadam and HouXangpeuk – to allow fish migrations. While the Don Sahong Power Company is "very confident the mitigation measures will be successful",<sup>5</sup> reviews of project documents by fisheries experts commissioned by WWF (February 2014), as well as those published by the MRCS, including the initial assessment (January 2014) and more recent briefing note (November 2014), all raise questions and concerns over limited baseline information, the effectiveness and viability of proposed mitigation measures, and significant risks if they don't work.

The MRCS briefing note (November 2014) states that the effectiveness of fisheries mitigation measures "depends on the extent to which the alternative fish pass channels replace or mimic morphology and flow attraction of the Don Sahong channel as it now exists, and the time of the year different species spawn and migrate. At present there is insufficient information to assess whether this is viable, and hence the extent to which the partial loss of fish passage can be mitigated."<sup>6</sup>

In short, given uncertainties and risks, the expert groups commissioned by MRCS identifies numerous areas where further studies are needed to establish a baseline and better assess the risks and potential impacts, including on fisher livelihoods upstream and downstream.

**There should be a comprehensive transboundary impact assessment, with input from – and participation of – diverse stakeholders in the study design and implementation**

While the project has undertaken a cumulative impact assessment (dated January 2013), it downplays the cumulative and transboundary impacts. This assessment goes against available scientific evidence which highlights the serious risks that the project poses for fisheries and

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<sup>2</sup>ICEM, 2010, *MRC Strategic Environmental Assessment (SEA) of hydropower on the Mekong mainstream*, Hanoi, Viet Nam, p. 61. Available at: <http://www.mrcmekong.org/assets/Publications/Consultations/SEA-Hydropower/SEA-Main-Final-Report.pdf>

<sup>3</sup>IFReDI, 2013, *Food and nutrition security vulnerability to mainstream hydropower development in Cambodia*, June 2013. Available at: [https://www.oxfam.org.au/wp-content/uploads/2014/02/pdf\\_food-and-nutrition-for-print-2.pdf](https://www.oxfam.org.au/wp-content/uploads/2014/02/pdf_food-and-nutrition-for-print-2.pdf)

<sup>4</sup> See for example, ICEM, 2010 *MRC Strategic Environmental Assessment (SEA) of hydropower on the Mekong mainstream*, Hanoi, Viet Nam, pp 104-106.

<sup>5</sup>See: <http://dshpp.com/faq/>

<sup>6</sup> MRC Secretariat, 2014, *BRIEFING NOTE In support of Public Consultation regarding Prior Consultation for the Proposed Don Sahong Hydropower Project*, November 2014, p 13. Available at: <http://www.mrcmekong.org/assets/Publications/Consultations/Don-Sahong/Briefing-Note-final-clean.pdf>

livelihoods of people in the Lower Mekong Basin. While it's dated 2013, it fails to draw on the findings of the SEA published in 2010, erroneously noting that it was not "available in time for this CIA".

Given Don Sahong Dam is located adjacent to Cambodia, the MRCS briefing note (November 2014) states "fisheries become automatically by nature a transboundary issue" and there are potential adverse transboundary social impacts. Yet, "insufficient attention has been paid to potential cross border impacts on fisher communities in Cambodia."<sup>7</sup>

It is important that decision over whether to proceed with the project, and if so, under what conditions is informed by an assessment of potential transboundary impacts, including but not limited to lost income generation, livelihoods food and nutrition security as well as replacement costs of lost fisheries – this would better help understand the magnitude of risks involved.

In addition, there are at least two important studies underway – MRC Council Study and Vietnam-initiated Mekong Delta Study – which seek to support MRC member countries better understand the potential risks and benefits of development initiatives, including proposed mainstream dams. Both these studies were identified as priority areas by Mekong leaders at the MRC Summit in April 2014, which called for the studies to be implemented more quickly "to provide sound advice and recommendations on sustainable development in the Basin."<sup>8</sup> Not giving these State-supported studies adequate consideration into the prior consultation process is a missed opportunity for more sustainable outcomes.

### **Prior Consultation for the Don Sahong Dam should be improved and extended**

According to the PNPCA, Prior Consultation shall be six months, but can be extended by MRC Joint Committee. The announcement that Don Sahong Prior Consultation process officially started on 25 July was communicated publicly to external stakeholders in early October (after the Joint Committee meeting), effectively making it a three-month consultation process. This is completely inadequate timeline for quality consultation on such a major transboundary project. Oxfam and partner experience is that for meaningful consideration of assessments, and consultation with stakeholders, there needs to be a longer lead time, and more adequate access to information – at different levels, and in different media. The shortened timeframe has not allowed enough time to meaningfully inform and consult affected communities and interested stakeholders, and the consultation has also been undertaken with significant gaps in information e.g. lack of transboundary impact assessment. This is repeating flaws experienced, and well documented in the Xayaburi Prior Consultation process. More time is needed to undertake further studies, including those identified by the MRCS technical reviews, the MRC Council Study and the Mekong Delta Study.

More time is also needed to conduct independent reviews of more recent information and analysis presented by the project developers at the regional consultation in December 2014. An example of this being sediment, with the project developers citing their recent studies that sediment is not an issue. This contradicts the preliminary findings of MRCS technical review, where "preliminary calculations suggest that the headpond may fill with sediment within six years."<sup>9</sup>

At the regional consultation, the MRCS indicated that the final version of the Technical Review will be made publicly available subject to agreement by the Joint Committee Working Group at its 3<sup>rd</sup> meeting in January 2015. However, at the time of writing, less than two weeks before the prior consultation is scheduled to close, it has not been publicly released, limiting opportunities for interested stakeholders and the "process to be informed by scientifically sound independent reviews of the possible impacts of the DSHPP [Don Sahong Hydropower Project]."<sup>10</sup>

<sup>7</sup> MRC Secretariat, 2014, *BRIEFING NOTE In support of Public Consultation regarding Prior Consultation for the Proposed Don Sahong Hydropower Project*, November 2014, p 16

<sup>8</sup> See: <http://www.mrcsummit.org/download/HCMC-Declaration-V5-4Apr2014.pdf>

<sup>9</sup> MRC Secretariat, 2014, *BRIEFING NOTE In support of Public Consultation regarding Prior Consultation for the Proposed Don Sahong Hydropower Project*, November 2014, p 24

<sup>10</sup> MRC Secretariat, 2014, *BRIEFING NOTE In support of Public Consultation regarding Prior Consultation for the Proposed Don Sahong Hydropower Project*, November 2014, p 6.



The regional consultation also failed to clearly outline next steps and how the regional consultation will be used to inform deliberations and decision making in the Prior Consultation process, which again has limited opportunities for stakeholders to meaningfully engage in the process. Similarly, groups that have participated in national and sub-national consultations in Cambodia have also pointed to flaws in the process, including but not limited to, insufficient community and NGO participation, lack of accessible information in local languages for people to understand the project.<sup>11</sup>

Oxfam concurs with the views expressed in the 2015 Joint Development Partners Statement at the MRC Council meeting in Hanoi on the “the importance of a transparent, inclusive and credible Prior Consultation process for the Don Sahong project, based on rigorous scientific assessments and including clear public information on the forward process. The MRC Joint Committee should consider strengthening the process and extending the consultation period to ensure availability of sufficient scientific information, as per the MRC Technical Review Team’s recommendation.”<sup>12</sup>

Oxfam’s call to improve and extend the Prior Consultation process for Don Sahong also draws on experience of the Xayaburi Dam. Following the experience of flawed Xayaburi Prior Consultation process, some MRC member countries, development partners, as well as NGOs and civil society have pointed to the need to improve and clarify the PNPCA process, including considering the extension of the Prior Consultation timeframe beyond six months.<sup>13</sup>

### **Work on Don Sahong dam should be suspended**

Taking into account the significant risks the Don Sahong Dam poses on fisheries and consequently people’s food and livelihood security, and the uncertainty over the effectiveness of proposed mitigation measures, Oxfam believes that construction of Don Sahong Dam and associated infrastructure should be suspended while more comprehensive transboundary impact assessments and other studies are completed; and more meaningful consultation including by extending the Prior Consultation process undertaken.

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<sup>11</sup>e.g. see: NGOs’ Joint Statement on Concerns about the PNPCA for Don Sahong Project <http://www.mrcmekong.org/assets/Other-Documents/stakeholder-submissions/Joint-Statement-NGOs-on-DSD-Consultation-Eng-final-141114.pdf>

<sup>12</sup>*Joint Development Partner Statement* to the Twenty First Meeting of the MRC Council Joint Meeting with the Nineteenth Development Partner Consultative Group, 15-16 January 2015, Hanoi. p. 2.

<sup>13</sup>See for example, Danida, Review Aide Memoire, Danish Support to the Mekong River Commission, 2011-2015, Danida Review Mission, 4-20 December 2013; AusAID, 2012, Brief summary of 2012 PNPCA research, available at: <http://www.internationalrivers.org/files/attached-files/responseausaid.pdf>; and Vietnam and Cambodian government’s formal reply forms to the Xayaburi Prior Consultation process, which noted six months as being inadequate.



1005 words (3000 word limit) 22 January 2015

Thank you Mekong River Commission (MRC) for the opportunity to voice our opinion and concerns. On behalf of Fauna & Flora International (FFI), I am happy to share our considered views on the proposed construction of the Don Sahong dam.

FFI has been conducting scientific research in Cambodia for over 13 years, with more than 110 years of successful global conservation activities. FFI currently operates in more than 140 projects in over 40 countries, mostly in the developing world. We are an independent conservation organisation, proudly standing up for biodiversity.

FFI Cambodia supports sustainable economic development that places equal importance on economic, social and environmental factors. However, in the specific case of the proposed development of the Don Sahong dam, I believe the negatives pose a far greater threat to the natural world and surrounding communities than any positives its construction would yield. This dam would adversely impact habitats in the dam's catchment, riparian zones and local communities – and I can not therefore, in good conscience, agree to its construction.

There are correlations between the tropical landscapes of the proposed Don Sahong dam in Laos and the Stung Atay hydro-dam in Cambodia. FFI Cambodia's Sustainable Provision of Ecosystem Services (SPES) project, (a project we operated from January 2011 – December 2014), in the Atay River "Stung Atay" catchment in the Cardamom Mountains, provides many lessons that should be considered when discussing the proposed Don Sahong dam, primarily about the impacts of deforestation on rainfall, and therefore electricity.

#### **Deforestation = Reduced Rainfall = Reduced Power Production**

This is backed up by growing scientific evidence linking deforestation to reduced local rainfall and reduced power production.

There are invaluable lessons to be learnt from the Amazon. Studies from 20 years ago predicted – accurately as we now know – that Amazon deforestation is altering the climate, as documented in researcher Antonio Nobre's 2014 The Future Climate of Amazonia Scientific Assessment Report. The report notes that the deterioration of the rainforest – through logging, fires and land clearance – has resulted in a decrease in forest transpiration, worsening droughts and connected to extreme weather events. This report also stated that the system of monsoons of South America is similar to that in Asia.

Evidence of rainfall dependence on regional forest cover has been found for the three major tropical forest regions of the world (Amazon, Central Africa, and Southeast Asia), which questions the logic of

hydro-power expansion plans in developing countries (Stickler, et al. Dependence of hydropower energy generation on forests in the Amazon Basin at local and regional scales, 2013).

In Southeast Asia further research is required before a comprehensive understanding of ecosystem services – that are linked to forest cover and necessary for hydro-electricity providers – can be grasped. Undertaking such research would be a valuable investment as part of strategic energy supply planning.

So, if deforestation (of which the construction of a hydro-dam would contribute to) leads to reduced rainfall, and low catchment water supply leads to reduced capacity of hydro-dams – how effective will Cambodian and Lao hydro-dams actually be in 30 years time?

### **15% Water Loss from Mekong**

Since 2000, there have been regular discoveries of new animal species (including reptiles, amphibians, birds and bats) in Cambodia, which indicates that much of Cambodia's biodiversity remains unknown and unstudied by science, and many more areas still need to be researched.

The Mekong River with its monsoon-based annual flood pulse supports a biological diversity second only to the Amazon in numbers of fish, mammals and birds. This is a region of great biodiversity importance.

As described in the Don Sahong Power Company's Preliminary Design Guidance, the Don Sahong project would be situated on a branch of the Mekong River, the Sahong channel, and the station would utilise on average about 15% of the total Mekong flow. A 15% loss of water flow could still have an adverse effect.

At the heart of the Mekong is the great lake, Tonle Sap, which is home to many bird and fish species, and is the driving force of the ecosystem processes that support the system's huge natural productivity. As per the MRC's 2013 Environmental Impact Assessment, the sustainability of both local and regional fisheries is identified as the most important environmental consideration for the proposed Don Sahong dam. The significance a year-round pathway for fish migration still needs to be investigated and monitored. In the Tonle Sap, for instance we understand that some species of fish need to swim upstream to the Cardamom Mountains to breed, then swim back.

Research is warning us that if deforestation in Cambodia continues at its currently alarming rate, this will likely lead to reduced rainfall and a lower volume of water in the Mekong River. In turn the volume of the Tonle Sap Lake will be reduced, the fisheries resources could be depleted, and the livelihoods of those communities who depend on fishing could be severely affected.

Even now, the proposed 15% average of the Mekong River flow the station would take annually will have a serious impact. In two years we may see no difference, but in 30 years this could be devastating to biodiversity, communities and industries depending on this water source.

### **Sustainable Economic Development**

FFI urges an openness and transparency when dealing with lessons learnt from existing hydro-dam construction. And we urge further research about the suitability of selected catchment areas for hydro-dam development. Already, several existing hydro-dams in the region are not running at intended capacity.

There are a number of other concerns to consider during and after construction of a hydro-dam. There needs to be good management during hydro-dam development, including educating (often foreign) workers about the importance of biodiversity and preventing workers from hunting wildlife around the site. There needs to also be good management and law enforcement (including of boundaries) after hydro-dam development to prevent the establishment of illegal villages which can lead to agricultural encroachment, hunting, land ownership disputes and illegal logging.

FFI recommends research into other options for producing electricity in Southeast Asia, such as solar panels and wind energy.

ENDS

## **Annex 5: List of participants**

*The Regional Public Consultation  
on Don Sahong Hydropower Project  
12<sup>th</sup> December 2014  
Champasak Grand Hotel,  
Pakse, Champasak, Lao PDR*

### **List of Participants**

#### **CAMBODIA**

1. H.E Mr. Kol Vathana  
Deputy Secretary General  
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2. Dr. Chrin Sokha  
Deputy Director General of Technical Affairs,  
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3. Mr. Chea Vannara  
Ministry of Water Resources and Meteorology
4. Mr. Chheng Phen  
Acting Director of IFReDI, MAFF
5. Mr. Pan Narith  
Ministry of Mines and Energy;
6. Mr. Sin Samnang  
Cambodia National Mekong Committee

#### **LAO PDR**

7. Mr. Chanthachit AMPHAYCHITH  
National Programme Coordinator, LNMCS

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Technical Officer, LNMCS
  
16. Mr. Phomma Phommavongsa  
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17. Mr. Soukkaseum Chathapanya  
Deputy of DID, LNMC
  
18. Mr. Khanmany Khounphonh  
DDG, Department of Meteorology and Hydrology, MONRE
  
19. Mr. Yeong Chee Meng-  
MFCB
  
20. Mr. Willy Wong  
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69. Mr. Nontarat Phaicharoen,  
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71. Mr. Xaybanedith  
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