

*The 5<sup>th</sup> Regional Stakeholder Forum  
Basin Planning and Environmental Management  
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Landmark Hotel, Vientiane, Lao PDR*



# **PNPCA Commentary from the PNPCA Lessons Learnt**

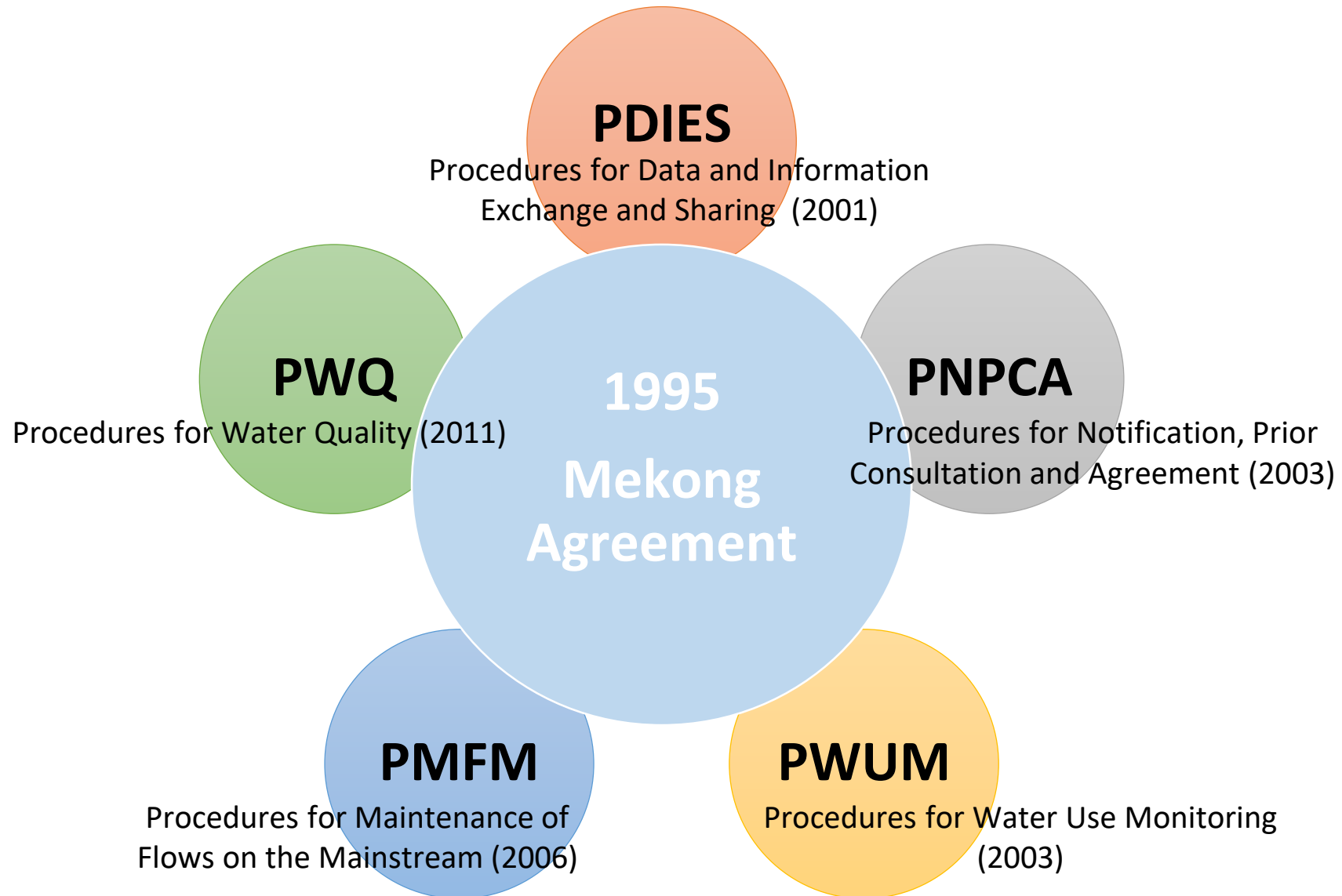


# 1995 Mekong Agreement and the Procedures



- Agreement to cooperate for sustainable development
- Underlying international water legal principles:
  - *Sovereign Equality and territorial integrity*
  - *Reasonable and Equitable utilization*
- Protection of the environment
- Establish the Mekong River Commission

# 1995 Mekong Agreement and the Procedures

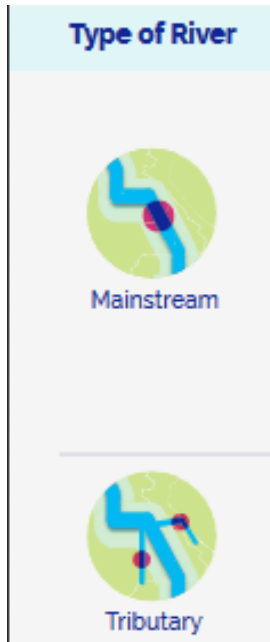




## Procedures for Notification, Prior Consultation and Agreement (PNPCA)

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## Prior Consultation Process Framework



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- Lot of attention and involvement from stakeholders on PNPCA
- Important to learn from this experience, to improve subsequent implementation
- Provide greater certainty and clarity for all member countries and other key stakeholders about the PNPCA

# From lessons learnt to Commentary

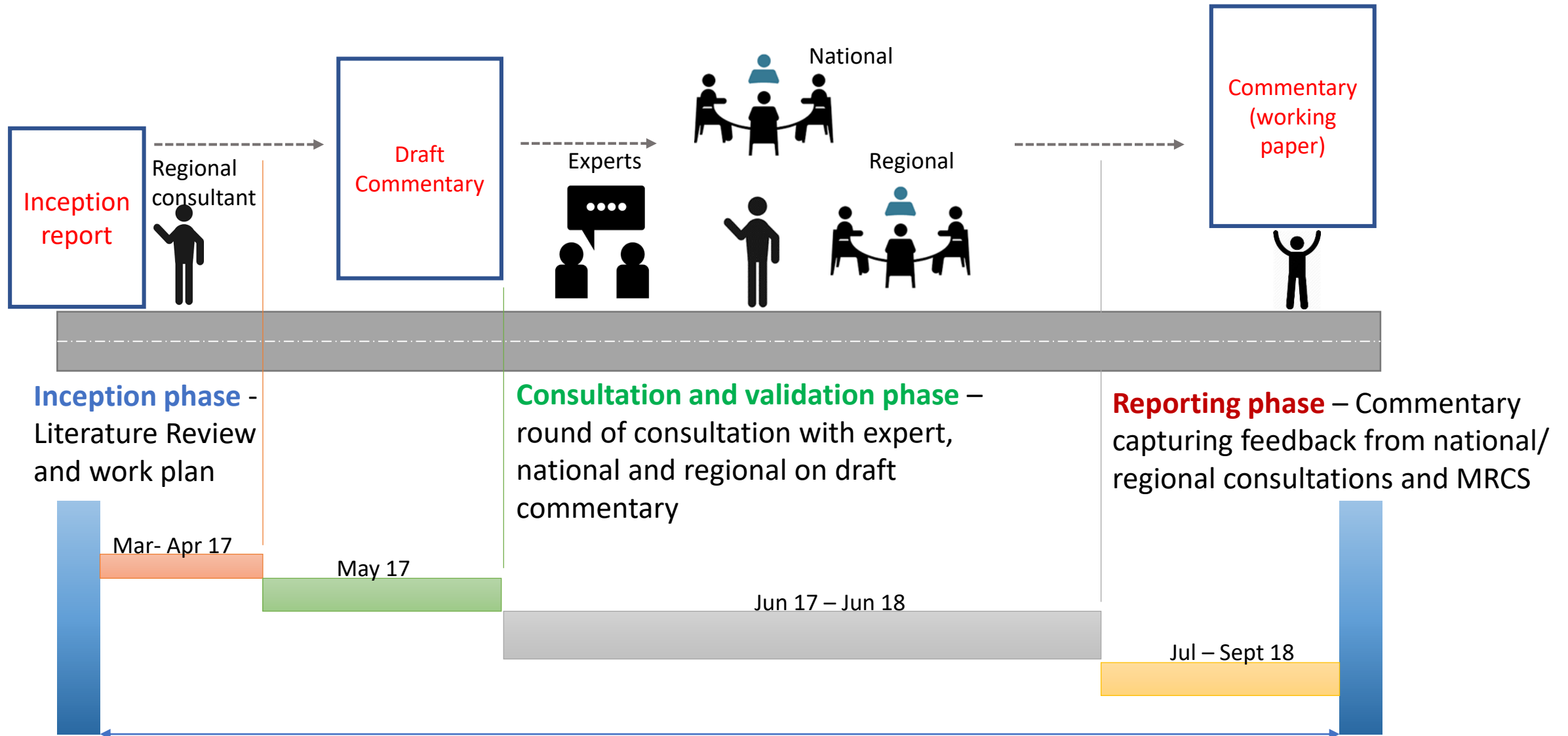
- **Greater clarity** regarding the **commencement and conclusion** of the Prior Consultation process
- **A process for the review and approval** of the **adequacy of documentation** received for Prior Consultation
- **Greater clarity** regarding the **roles of all actors** who have a responsibility for implementing the PNPCA
- **Development of appropriate project information disclosure practices** to effective stakeholder participation
- **Greater clarity** regarding the **role of transboundary EIA**
- Development of a **“Commentary”** on the provisions of the PNPCA



## Purpose, scope and approach of the PNPCA Commentary

- Supplement the current Guidelines on the Implementation of the PNPCA
- Clarify the key provisions and procedural aspects of the PNPCA in the context of the 1995 Mekong Agreement and other MRC procedures and guidelines
- Inspired by international best practice in the field
- Provide clarity around the PNPCA process
- Engagement and consultation with the riparian countries

# Commentaries development process





# Structure of each Commentary

## WORKING DOCUMENT PNPCA Commentary Note

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Referred Article

**Commentary 2:** A Duty to Promote Mutually Beneficial Cooperation

Lessons learned:

Relevant International norms and practice:

Specific recommendation:

# 19 Key Commentaries

## 1995 MA KEY PRINCIPLES AND INTERNATIONAL PRACTICES AND NORMS

Commentary 1: **Treating 1995 MA and PNPCA in their Entirety**

Commentary 2: **A Duty to Promote Mutually Beneficial Cooperation**

Commentary 3: **Purpose of PNPCA and Inter-dependency**

Commentary 4: **Sovereign Equality and Territorial Integrity, Reasonable and Equitable Use and No Significant Harm**

Commentary 5: **Aiming at Achieving Equity and Reasonableness for all**

## PNPCA PROCEDURAL PROVISIONS AND TERMS

Commentary 6: **Proposed Use Subject to Notification Requirements**

Commentary 7: **Timely Notification Requirements**

Commentary 8: **Completeness of Notification Documentation**

Commentary 9: **Notification Institutional Mechanism**

# 19 Key Commentaries (cont.)

<b>PRIOR CONSULTATION</b>	Commentary 10: <b>Proposed use under prior consultation</b>
	Commentary 11: <b>Available” and “Relevant” Data and Information for PC</b>
	Commentary 12: <b>Timely Notification Requirements under PC</b>
	Commentary 13: <b>When and how PC deems to be complete</b>
	Commentary 14: <b>Good Faith and Due Diligence Obligation During PC</b>
	Commentary 15: <b>Prior Consultation Institutional Mechanism</b>
<b>SPECIFIC AGREEMENT</b>	Commentary 16: <b>Specific Agreement</b>
<b>OTHER PROCEDURAL ISSUES</b>	Commentary 17: <b>Monitor and Address of Absence of Notification</b>
	Commentary 18: <b>Addressing Differences and Disputes</b>
	Commentary 19: <b>Roles and responsibilities of other Key Stakeholders</b>

## Key recommendations

- 1995 MA and PNPCA provisions should be **considered in their entirety** rather than standalone as provisions
- Mutual respect of **sovereign equality and territorial integrity** is needed
- Confirm need for **timely notification** and adoption and application of a **transboundary EIA guideline** and **relevant design guidelines**
- Avoidance of **preparatory activities** prior to completion of PC by the developer
- MRCS encouraging the notifying agency to **share project information at least several months** before the PC process commence
- Improvement of **public participation and communication** during Prior Consultation to Post Prior Consultation process

# Thank you

