



## CONCEPT NOTE

### 5<sup>th</sup> MRC REGIONAL STAKEHOLDER FORUM

#### **“2018 Priorities: Basin Planning and Environmental Management” 20-21 September 2018, Vientiane, Lao PDR**

#### **Background**

The rapid development in the Mekong River region has placed a strong pressure on the Mekong Basin’s water and related resources. In line with the 1995 Mekong Agreement, the Member Countries (MCs) have come together to work for sustainable development of the Mekong River Basin and its resources in order to achieve the basin Vision of an economically prosperous, socially just and environmentally sound Mekong River Basin. Over the past 23 years, the MRC has made several interventions and implemented various frameworks and guidance to create an avenue for an active involvement from the MCs when it comes to water and related resources development and management in the Basin. These interventions may be seen through the production of, for example, five sets of MRC Procedures, five hydropower principles, Sustainable Hydropower Development Strategy (HDS2001), the Preliminary Design Guidance for Proposed Mainstream Dams in the Lower Mekong Basin (PDG), and a series of mitigation guidelines and studies.

Recognising the interests involved in the Basin and the importance of a shared and informed understanding of different stakeholders’ perspectives, the MRC has been implementing various activities to strengthen relationships with a broad range of actors and players including the private sector, civil society and academia. Stakeholder engagement is central to the MRC’s policy framework and is required under domestic legislation in each of the Member Countries. The MRC organizes Regional Stakeholder Forums every year to address interests and concerns of regional and international stakeholders, including NGOs, the private sector, media, development partners and other interested groups. As part of the MRC’s regional stakeholder engagement mechanism, the Forums serve as a platform for the MRC’s Member Countries and other relevant stakeholders to discuss, provide and exchange views on reasonable and equitable use of water and related resources in the Mekong River system.

Four Regional Stakeholder Forums (RSF) were organized in 2017, bringing together not only representatives from the government, but also from the private sector, development partners, researchers, non-government organisations, and civil society organisations for open and constructive dialogue on pressing issues affecting the Mekong River Basin and how the MRC is addressing them. These forums were on the Pak Beng project held in February and May, on Climate Change Adaptation Strategy and Action Plan in June, on the Council Study in February and December, and a Dialogue with Hydropower Developers in August.

As decision-making process in the water and related resources management often addresses multiple objectives, involves diverse interests, and has far-reaching effects, we are working on a multiple-dimension approach with consideration of cost effectiveness. With that approach, the MRC will organize forums with multiple relevant issues and subjects that address public interest.

This first forum of the year 2018, also known as the 5<sup>th</sup> MRC Regional Stakeholder Forum, is to continue dialogues, exchanges and discussions with relevant and interested stakeholders on various on-going and emerging issues. They are: (1) Prior Consultation process for the Pak Lay Hydropower Project, and (2) 2018 prioritized works on basin planning and environmental management, including the Joint Action Plan (JAP) for Pak Beng Hydropower Project, Joint Environmental Monitoring (JEM), Xayaburi design changes review, PNPCA Commentary, Guidelines for Transboundary Environmental Impact Assessments (TbEIA), update of the Preliminary Design Guidance (PDG), and Sustainable Hydropower Development Strategy (SHDS).

## Objectives and Topics of the Forum

The First Regional Information Sharing/Consultation Meeting on the Pak Lay Hydropower Prior Consultation Process will take place on the first day of the 5<sup>th</sup> Regional Stakeholder Forum (5<sup>th</sup> RSF), with following objectives:

1. To provide information and reinforce understanding on the MRC's Prior Consultation process under the PNPCA and the 1995 Mekong Agreement;
2. To provide information on the general understanding of the proposed Pak Lay Hydropower Project; and,
3. To obtain viewpoints and comments on the approach and methodology to be undertaken by the MRC in conducting a Technical Review of the proposed Pak Lay Hydropower Project.

The second day of the 5<sup>th</sup> RSF will be devoted to other key MRC works that meet public interest. It aims:

4. To inform the stakeholders about the status and progress of the MRC on-going works related to planning and management of the basin;
5. To consult with broader stakeholders and exchange views on how to further and improve the MRC's works, i.e. the JEM, Sustainable Hydropower Development Strategy, PNPCA Commentary, etc. towards sustainable development of the Mekong basin; and,
6. To seek stakeholders' advice and support in the future implementation of the discussed initiatives, including the Mekong Adaptation Strategy and Action Plan (MASAP), TbEIA, JAP, and updated Preliminary Design Guidance.

The Forum expects to have the following representatives and participants:

- MRC's Member Countries including NMCs, Planning Sector and Energy Focal Agencies, and Implementing Agencies
- Research Institutes and Universities
- INGOs and LNGOs and Civil Society Organizations
- Local authorities and communities
- Private sector and companies

- Development partners
- Other interested groups

Most of above-mentioned topics were presented to a wide range of stakeholders at previous MRC Regional Stakeholder Forums, conferences and other platforms. The 5<sup>th</sup> RSF will discuss the status and progress of those topics, as well as their connections and ways forward.

Each topic has its own rationale and objective.

## **1. Prior Consultation process for the Pak Lay Hydropower Project**

On 13 June 2018, Lao PDR submitted the Pak Lay Hydropower Project for prior consultation under the MRC's Procedures for Notification, Prior Consultation and Agreement (PNPCA). The six-month prior consultation (PC) process officially started on 08 August 2018. The PC process allows the notified Member Countries to evaluate potential transboundary impacts of the proposed water use, and, with the support from the MRC Secretariat, to discuss these through the MRC's Joint Committee. The process aims to arrive at an agreement on the proposed use and a decision on measures that will apply to the project to avoid, minimise and mitigate possible harmful effects on the environment and people downstream and upstream.

Like the Xayaburi, Don Sahong and Pak Beng Hydropower Projects, the proposed Pak Lay project has drawn a great deal of attention from the public, particularly civil society organizations, non-governmental organisations and the media, as well as from the MRC's Development Partners. Taking lessons learnt from the implementation of the PNPCA, the stakeholder involvement should, therefore, aim to inform, consult and involve potentially affected, interested stakeholders and the public on the proposed Pak Lay project, as well as on the prior consultation process. This should include highlighting the role of the MRC, and the 1995 Mekong Agreement and its implications. Relevant information will be made available to the public and be shared with stakeholder groups ahead of their participation in any public consultation meetings to allow enough time for them to provide feedback.

During the PC process for the Pak Lay Hydropower Project, there will be two regional information sharing and consultation meetings, together with a series of national consultation meetings.

## **2. Joint Action Plan (JAP) for Pak Beng Hydropower Project**

At the end of the PC process for the Pak Beng Hydropower Project (PBHPP), Member Countries agreed to a Statement, "calling on the government of Lao PDR to make all every effort to address any potential adverse transboundary impacts of the project". It also tasked the MRC Secretariat to prepare a Joint Action Plan (JAP) that outlines a process for implementing the Statement.

The aim of the JAP is to provide mechanisms for on-going feedback between the project developer and Lao PDR, and the MRC and stakeholders, regarding the on-going design, construction and future operations of the PBHPP. The intention is to monitor the implementation of the Statement and support Lao PDR in its on-going efforts to identify measures that may further avoid, minimize, or mitigate the potential impacts of the project.

Progress of the JAP was presented to the participants at the 2017 Greater Mekong Forum and most recently at the MRC International Conference in April 2018. By April 2018, the JAP version 5 has

received approval from three Member Countries and is awaiting the final official approval from Lao PDR.

### **3. Joint Environmental Monitoring (JEM)**

The MRC's Technical Review Reports (TRRs) of the three mainstream hydropower projects have provided the same recommendation. The TRRs recommended there be a need to design and implement a detailed scientific robust environment monitoring programme, with sufficient budget, to properly assess several important impacts. These include the assessment of impacts on hydrology and hydraulics, river geomorphology and sediment, water quality, aquatic ecology and fisheries, in order to design or re-design effective impact mitigation measures for the protection of fisheries, the environment and river ecology in the lower Mekong basin. As a result, the MRC initiated a Joint Environment Monitoring (JEM) of the mainstream hydropower projects.

The JEM has three primary purposes. First, it is to fill the gaps of environmental data and information for Mekong mainstream hydropower project planning and design. Second, it is to support the Member Countries to jointly monitor and report on the transboundary environmental impacts of Mekong mainstream hydropower projects during construction and operation to inform mitigation and management measures. Third, it is to facilitate environment data and information sharing and exchange among the concerned Member Countries.

Work on the JEM is under way. The MRC's Joint Committee is expected to approve it by the end of 2018, with implementation expected to kick off in mid-2019.

### **4. Xayaburi Design Changes Review**

Following the completion of the prior consultation process for the Xayaburi Hydropower Project in April 2011, the Lao government commissioned a compliance report in August 2011 in response to the MRC's Technical Review Report on the PC process of the project. During this period, the Lao government and the Xayaburi Power Company Ltd (XPCL) conducted studies to propose re-design solutions to meet concerns of the MRC's Member Countries, raised during the prior consultation process. These concerns include, for example, fish passage, sediment transport, navigation facility and seismic risks.

The MRC Secretariat has since the second half of 2017 carried out the design changes review. The review considers ONLY officially provided, or publicly available, reports, drawings, presentations, and correspondences provided by the Lao government and the developer as well as their advisors (i.e. re-design reports received in February 2014; presentations in July 2015; drawings in August 2016; and report on design adaptation of the Xayaburi Hydropower Project in November 2017).

The design changes review of the Xayaburi project is intended to determine whether the recommendations of the PNPCA's Xayaburi Technical Review Report (XTRR) by the MRC Secretariat have, in general, been taken up in the re-design of the Xayaburi project.

### **5. Procedure for Notification, Prior Consultation and Agreement (PNPCA) Commentary**

The MRC Secretariat has received 54 notifications since the adoption of the Procedures for Notification, Prior Consultation and Agreement (PNPCA) in late 2003 by the MRC's Council and of the

Guidelines on Implementation of the PNPCA in August 2005 by the MRC's Joint Committee. It was observed by some legal experts that the 1995 Mekong Agreement and the PNPCA represent a leading-edge practice internationally. The MRC has also observed that the implementation of the PNPCA (particularly for the Prior Consultation) has drawn a great deal of attention and involvement from a wide range of stakeholders. The MRC has documented several learned lessons and pending and emerging challenges. The MRC's Member Countries have concurred that it is important to learn from this experience, improve subsequent implementation, and provide greater certainty and clarity for all Member Countries and other key stakeholders about the PNPCA process.

To clarify and elucidate the PNPCA process and its intended purpose, there was a recommendation to develop a "Commentary" on the provisions of the PNPCA. The Commentary is to supplement the current Guidelines on Implementation of the PNPCA by placing the key provisions of the PNPCA in a wider context of international best practice.

The Commentary would present the MRC and its Member Countries with an opportunity to strengthen confidence, build measures and demonstrate global leadership in the cooperative management of a major international basin by systematically identifying which aspects of the PNPCA works effectively, which aspects present challenges in implementation, which improvements or changes in approach might address such challenges, and how such improvements or changes could be attained.

## **6. Guidelines for Transboundary Environmental Impact Assessment in the Lower Mekong Basin (TbEIA Guidelines)**

The MRC's Member Countries have resolved to develop and implement a Guidelines for Transboundary Environmental Impact Assessment (TbEIA) in response to the 1998 MRC's Council Resolution and 2003 Joint Committee' decision. The decision to have the TbEIA Guidelines is to facilitate cooperation and support the protection of the environment, natural resources, aquatic life and conditions, and the ecological balance of the lower Mekong River basin and prevention and cessation of harmful effects resulting from development projects, all in accordance with the 1995 Mekong Agreement.

The TbEIA Guidelines is built on and supplements the PNPCA. It also uses and considers various MRC's Procedures, including the Procedures for Data and Information Exchange and Sharing (PDIES), Procedures for Water Use Monitoring (PWUM), Procedures for the Maintenance of Flow on the Mainstream (PMFM) and Procedures for Water Quality (PWQ), in addressing potential transboundary environmental impacts of development projects. It is also developed with valuable experience gained from the MRC's supported consultations on Mekong mainstream dam projects, and lessons learnt from the 3S river studies commissioned by the MRC as well as observation of transboundary EIA practice in other regional contexts, such as the Espoo Convention. The Guidelines aims to facilitate Member Countries' cooperation in conducting EIA for projects with potential transboundary environmental impacts, while respecting differences among the EIA legislations in the Member Countries and specifics of their national EIA systems.

The general objective of the TbEIA Guidelines is to support application of "Objectives and Principles of Cooperation", stated in the 1995 Mekong Agreement, namely articles 3, 5, 6, 7, and 8. The Guidelines is also based on a draft TbEIA Framework, elaborated from 2004 to 2010 through a series of workshops, seminars, national and regional consultations and pilot studies and through legal and

institutional reviews.

## **7. Update of the Preliminary Design Guidance for Proposed Mainstream Dams on the Lower Mekong Basin (PDG)**

During reviews of submitted documentation for PNPCA prior consultation processes, there are certain gaps in the Preliminary Design Guidance for Proposed Mainstream Dams on the Lower Mekong Basin (PDG) that may need to be filled; there are also areas of ambiguity that need to be clarified, in addition to applicability to significant tributary projects in terms of transboundary impacts. While maintaining the same purpose and principles of the current PDG during its formulation in 2009, the updated process is to enhance the PDG by considering:

- lessons learnt from the PNPCA prior consultation processes for the review of three mainstream projects, and
- additional technical guidance in the form of manuals on environmental impacts mitigation and regionally relevant case studies as a separate supporting set of documents that can provide a wealth of information and reference material to assist the enhancement of the PDG effectively.

The updated PDG will provide contemporary, research-based performance targets, and design and operating principles for mitigation measures, monitoring and adaptive management.

## **8. Update of the Sustainable Hydropower Development Strategy (SHDS)**

A concept of the “nexus between water, food and energy” has been debated extensively and become increasingly common. It has emphasised the need for integrated water planning, much like the mandate of the MRC. A battery of studies and research have recommended that basin-wide cooperation with integrated development planning is essential to achieve basin scale sustainable development for the Mekong basin. In response to the need to move basin development towards more “optimal” and sustainable that can address long-term needs, including environmental protection and ensure water, food and energy security, the updating of the MRC’s Sustainable Hydropower Development Strategy (SHDS) is essential.

The main output of the updated SHDS is a shortlist of hydropower development pathways with a clear analysis of trade-offs that each option entails. The updated SHDS will also detail the cost and benefit of preferred development options and will provide an agreed set of strategic actions to facilitate implementation of the strategy.

The MRC has since 2017 convened several meetings and workshops to present the rationale and progress of the updating work of the SHDS (and PDG) to concerned stakeholders. These consultations include the 4<sup>th</sup> MRC Regional Stakeholder Forum in December 2017, consultation with hydropower developers in January 2018, and most recently the MRC International Conference in April 2018.

## **Expected Outcomes**

The Forum expects to have the following outcomes:

1. Stakeholders are well informed about and updated with key work-in progress related to basin

planning and management;

2. Constructive advice and input are obtained to facilitate the future development of the Joint Environment Monitoring, Sustainable Hydropower Development Strategy, PNPCA Commentary and the like; and,
3. Commitment and support from concerned stakeholders are provided for future up-taking and implementation of the discussed initiatives, including the MASAP, TbEIA, JAP, and updated PDG.