



Statement of the Save the Mekong Coalition Regarding the Pak Lay Dam Notification

On 13 June, the Government of Laos formally notified the Mekong River Commission (MRC) of its intention to construct the Pak Lay dam on the mainstream of the Mekong River. The notification triggers the Prior Consultation procedure under the Procedures for Notification, Prior Consultation and Agreement (PNPCA) of the 1995 *Mekong Agreement*. Pak Lay is the fourth Mekong mainstream dam to be submitted for the procedure.

The Save the Mekong coalition is deeply concerned by the Pak Lay dam notification and the plans to initiate another Prior Consultation procedure.

The Pak Lay dam threatens to compound the impacts of existing dams on the Mekong mainstream and dissolve any hope of accountability for communities affected by existing dams in the lower Mekong Basin. With respect to Prior Consultation, serious and outstanding concerns regarding each of the mainstream dams that have undergone the procedure to date – the Xayaburi, Don Sahong and Pak Beng dams - remain unresolved. The Prior Consultation procedure itself has been the subject of major questions as to its adequacy, and calls for reform of the PNPCA have not been fully addressed. Furthermore, the lower Mekong country governments have yet to provide any clarity on whether and how the findings and recommendations of the MRC Council Study, intended to provide a basin-wide assessment to inform decision-making on individual projects, will be taken up.

We call on the lower Mekong country governments and the MRC to refrain from launching the Prior Consultation procedure for the Pak Lay dam. Instead, we urge lower Mekong country governments and the MRC to fully and transparently address outstanding concerns and questions regarding the impacts of existing dams, reform of the Prior Consultation procedure, and the uptake of the MRC Council Study.

Outstanding concerns over existing projects: Xayaburi, Don Sahong and Pak Beng

The decision-making processes for the Xayaburi and Don Sahong dams, now under construction on the Mekong mainstream in Lao PDR, ignited significant controversy within the Mekong region and internationally. Requests for information and concerns over project impacts expressed during the Prior Consultation procedures were never formally addressed, including calls for extension of the consultation period, thorough baseline information, and studies of transboundary impacts. Both projects commenced construction despite the absence of agreement or resolution of concerns within the MRC's Joint Committee and Council.

The redesign of the Xayaburi dam, touted by the MRC as an outcome of the Prior Consultation process, has not been publicly released, although the project is now nearing completion. Furthermore, information regarding the MRC Secretariat's review of the Xayaburi redesign for compliance with the 'Preliminary Design Guidance for Proposed Mainstream Dams in the Lower Mekong Basin' (PDG) has not been made public. This is despite extensive and repeated calls for the

redesign to be released and reviewed, by MRC development partners¹, civil society² and other stakeholders. Similarly, the results of fishery impact monitoring studies for Don Sahong have not been released to the public or independently reviewed.

The Xayaburi and Don Sahong dams are scheduled for completion in 2019. The MRC has proposed an initiative for joint monitoring of the impacts of these existing projects. However, little detail of this plan has been made available to affected communities and the public to date. Given the controversies and unanswered questions regarding the impacts of the dams that are currently under construction, no new dams should undergo the Prior Consultation procedure until impact monitoring is conducted on existing projects, and the results transparently shared with the public and used to inform debate on any plans for additional dams on the Mekong mainstream.

Regarding the Pak Beng dam, the third mainstream dam to undergo the Prior Consultation procedure last year, the information provided to inform the process was found to be critically limited due to a lack of baseline data and poor quality environmental impact assessment (EIA) and related project assessments. The lower Mekong country governments announced that a Joint Action Plan (JAP) would be developed to demonstrate how the concerns and requests raised by member governments during the Prior Consultation process would be addressed; yet to date, no substantive information about the status or contents of the JAP has been released to the public.

Prior Consultation requires reform

Following controversies surrounding the Prior Consultation procedures for Xayaburi and Don Sahong, and subsequent calls for reform, the MRC promoted an ‘improved’ procedure for Pak Beng. However, many on-going issues were observed during the Pak Beng Prior Consultation process.

As noted above, the poor quality of the project studies used to inform the Prior Consultation raised questions about the adequacy of the information required for informed consultation. Furthermore, the MRC explicitly limited the topics for consultation to possible mitigation options, rather than broader questions surrounding the overall costs and benefits of the dam and whether or not it should proceed due to its transboundary impacts on the river system. As such, the adequacy of the Pak Beng consultation meetings held in Thailand continue to be the subject of an on-going lawsuit in the Thai Administrative Court.³ The Joint Action Plan (JAP) for the Pak Beng dam, which is intended to show how concerns and requests from member governments will be addressed, has not been released to the public.

Given previous experience, without more rigorous reform, there is little indication that a new Prior Consultation procedure for Pak Lay will be any different from past experience or that it will be able to ensure minimum standards of transparency and accountability, let alone meaningful participation for affected communities, civil society and the general public.

¹ See MRC Development Partner statements: www.mrcsummit.org/assets/previous-summits/3rd-summit/2c4a8fed54/Statement-from-DPs-at-Summit.pdf; www.mrcmekong.org/assets/Uploads/Joint-Development-Partner-Statement.pdf; www.mrcmekong.org/assets/Uploads/Joint-DP-statements-IDM-2017-final-29062017.pdf.

² See Save the Mekong statements and submissions: www.mrcmekong.org/assets/Other-Documents/stakeholder-submissions/StatementfromSavetheMekongCoalitionforMRCCouncil.pdf; https://savethemekong.net/wp-content/uploads/2016/09/300816_STM-Statement-for-Informal-Donors-Meeting.pdf.pdf.

³ www.bangkokpost.com/news/asean/1346354/pak-beng-dam-meets-stiffer-new-resistance.

No clarity on uptake of the Council Study

Earlier this year, the MRC released its ‘Council Study’, agreed between the lower Mekong governments in response to concerns over the decision-making process for the Xayaburi dam. The study was initiated to provide a basin-wide, cumulative assessment of the impacts of planned dams to supplement project-by-project decision-making under the PNPCA in order to ensure more informed decision-making and a basin-wide approach to planning.

The USD 4.7 million, 7-year study starkly shows that the series of dams planned on the Mekong and its tributaries pose a serious threat to the ecological health, economic vitality, and food security of the region. Despite the severity of the findings and huge investment in the study, the lower Mekong governments have yet to formally endorse the Council Study findings, or explain how the study will inform the Prior Consultation process and overall decision-making on Mekong dams. The Council Study recommends that renewable energy alternatives to destructive dams be seriously considered; yet no indication has been given of how this and other recommendations will be taken up by lower Mekong governments or used to inform decision-making.

Review and development of key initiatives

The MRC is currently in the process of reviewing and updating the ‘Preliminary Design Guidance for Proposed Mainstream Dams in the Lower Mekong Basin’ (PDG)⁴ and Sustainable Hydropower Development Strategy (SHDS).⁵ In the Pak Lay notification, the proposed schedule for commencing construction on the project is 2022. Given this timeline, there is little reason to initiate the Prior Consultation process at this time. The Prior Consultation process should not be rushed forward before completion of the updated PDG and SHDS for the basin can be used to inform the Prior Consultation procedure and decision-making on mainstream dams.

Conclusions and recommendations

With so many outstanding issues and questions unresolved, the Pak Lay dam threatens to compound the impacts of existing mainstream Mekong dams, and dissolve any hope of accountability, transparency, or opportunities for meaningful civil society participation in decision-making on the future of the Mekong River.

We urge the lower Mekong country governments and the MRC to refrain from pressing forward with another contentious Prior Consultation procedure, and to transparently address concerns and questions over existing mainstream Mekong dam projects, reform of the Prior Consultation, and the uptake of key MRC initiatives.

Specifically, we call on the lower Mekong governments and MRC to address the following:

- Publicly release the full design of the Xayaburi dam and the MRC’s review of the project for compliance with the PDG.
- Ensure that fishery impact monitoring studies for the Don Sahong dam are released to the public and independently reviewed.

⁴ www.mrcmekong.org/about-mrc/completion-of-strategic-cycle-2011-2015/initiative-on-sustainable-hydropower/ish-subsite-on-pdg/

⁵ www.mrcmekong.org/assets/Uploads/SHDS2019-CN-FINAL-DRAFT.pdf

- Clarify the scope of joint monitoring initiatives, and ensure that no new dams proceed through Prior Consultation before the results of joint monitoring have been completed and shared with the public.
- Release the Joint Action Plan for the Pak Beng dam.
- Share lessons learned from the previous Prior Consultation procedures undertaken to date and assessment of how these are being addressed in reforms to the process.
- Clarify lower Mekong governments' commitment to the findings and recommendations of the MRC Council Study.
- Ensure the review of the PDG and the development of the SHDS are completed before any new Prior Consultation process is initiated.

Save the Mekong Coalition
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