Implementation of Previous Prior Consultation Processes and Lessons Learnt

Regional Stakeholder Forum on the Council Study and the Pak Beng Hydropower Project

22nd – 23rd February 2017

Luan Prabang, Lao PDR
Prior Consultation (PC) for Xayaburi Hydropower Project

Important dates:
• Documents submission for PC by Lao PDR: 20th Sep. 2010
• Start date of PC Process: 22nd Oct. 2010
• End date of PC Process: 22nd Apr. 2011

Meetings:
• 3 meetings of PNPCA JC Working Group
  Meetings: roadmap, technical review, modality of national consultation, and result of technical review report

National consultations:
• Cambodia: 2 meetings; Thailand: 4 meetings; Viet Nam: 2 meetings
Outcome:

• 19th Apr. 2011: MRC-JC Special Session (SS) - could not reach an agreement and refer the matter to MRC Council for decision

• 8th Dec. 2011: 18th MRC Council Meeting - unable to reach a unanimous conclusion, however, agreed to conduct a study on sustainable management and development of the Mekong River including impacts by mainstream hydropower project (Council Study)
Prior Consultation for
Don Sahong Hydropower Project

Important dates:
- 30\textsuperscript{th} Sep. 2013: Submission for Notification by Lao PDR
- 3\textsuperscript{rd} Oct. 2013: Notified countries requested DSHPP be submitted for PC Process
- 16\textsuperscript{th} Jan. 2014: MRC-JC SS decided on the process
- 30\textsuperscript{th} Jun. 2014: Re-submission for PC Process by Laos
- 25\textsuperscript{th} Jul. 2014: Start date of PC Process
- 24\textsuperscript{th} Jan. 2015: End date of PC Process

Meetings:
- 3 Meetings of PNPCA JCWG - roadmap, conduction of technical review, modality of national and regional consultations, and result of technical review report
Prior Consultation for Don Sahong Hydropower Project

National and regional consultations:
- Regional consultation: 1 meeting
- Cambodia: 4 meetings
- Thailand: 6 meetings
- Viet Nam: 4 meetings

Outcome:
- 28th Jan. 2015: MRC-JC Special Session - agreed to report outcomes to MRC Council for further guidance
- MRC Council decided in June 2015 to refer to national government level for further resolution

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What are the benefits/impacts of the Prior Consultation process

- **Opportunities:** for member countries and interested stakeholders to review development projects on the mainstream

- **Additional Investment:** Lao Gov’t and developer invested about $400 million to revise its dam’s design of Xayaburi project

- **Without PC process:** there is no detailed information sharing and consultation of projects of sovereign countries

- **With PC process:** pushes for scientific assessments, facilitation of negotiations (document adequacy), and joint monitoring

- **PNPCA Improvement:** MCs and MRCS reviewed and discussed various PNPCA aspects
Lessons learned in implementing Prior Consultation Process

• Provided opportunity to road test (PNPCA application) for MRC Hydropower Diplomacy and learn from these experiences:

  ✓ Interpretation of PNPCA & Guideline: *timely notification, length of consultation, timely disclosure of data & information*

  ✓ Need for trans-boundary EIA

  ✓ Timing of commencement of a proposed use

  ✓ **Post-consultation** (process after six-month timeframe)

  ✓ Role of JC and Council in implementing PNPCA

  ✓ Need for wider consultation
Towards improving PNPCA and its Guidelines for Greater Clarity

- **Report on Lessons Learnt from PNPCA Implementation** – resulted from a Dialogue Workshop in February 2017 (available on MRC’s website)

- **Draft Working Paper on Lessons Learnt from Implementation of PNPCA** – a living document discussed at Joint Platform and commented by MCs

- **Commentary Note on PNPCA and its Guidelines** – to provide further explanation, greater clarity, with recent developments/ ‘best practice’ in international law)
Thank you!