Implementation of Previous PNPCA Processes and Lessons Learnt
Prior consultation processes to date

3 prior consultation processes to date – each one reflecting an improvement on the previous process

Agreement reached by JC with a Statement
- Joint Action Plan to implement the Statement

- No agreement reached by both JC and Council
  - Conduct Council Study
  - Matter was referred to Governments for solution

Xayaburi
22 Oct. 2010
6-Months Prior Consultation Process

Don Sahong
25 Jul. 2014
6-Months Prior Consultation Process

Pak Beng
6-Months Prior Consultation Process

Next PNPCA?

✓ Enhanced PNPCA Implementation
✓ Institutionalized Statement & JAP
✓ Enhanced stakeholder engagement
1. The Xayaburi prior consultation process

Xayaburi Hydropower Project
- Xayaburi province, Northern Laos
- 100 Km downstream of Luang Prabang
- 3rd Cascade of hydropower projects
- Max. capacity: 1,285 MW
- Turbines: 7*175 MW
- Commercial operation: OCT 2019
- Export to THAILAND: 94%
- For Lao PDR: 6% (1 million people)
- PNPCA PC Process:
  ❖ Start date: 22 Oct 2010
  ❖ End date: 19 Apr 2011
Lessons learnt from Xayaburi

1. There was a perception that HPP should have “no impact” to proceed:
   - Transparent dam with no impacts ➔ pushed *attention away from measures to avoid, minimise and mitigate*.
   - Impression was that if *dam was not transparent, then it shouldn’t proceed*.

2. Extension to PC must for a limited time for JC to reach consensus:
   - An extension should only allow more time for *assessment of available information and data*.
   - A *10-year extension/moratorium* ➔ Lao PDR cannot stop developing.
Lessons learnt from Xayaburi (Cont.)

2. **Extensions to PC (Cont.)**
   - International Law Commission (ILC) commentaries suggest that extension of notification in the UN Convention only to *share and review available data and information, i.e. no new research.*

3. **There was no established mechanism for post PC engagement:**
   - Post PC process lead to improvements to design (additional investment), but it *went unnoticed and without ongoing engagement.*
   - Now *in discussions to assess what changes* were made to the design and operating rules.
4. **Stakeholders involvement was minimal:**

   - External stakeholders expected a “yes” or “no” answer. There was **insufficient information** given to stakeholders about process.

Based on the IAP2 Spectrum - https://www.iap2.org/
NO CLEAR OUTCOME OR AGREED WAY FORWARD
2. The Don Sahong prior consultation process

Don Sahong Hydropower Project
- Champasack province, Southern Lao PDR
- ~2km upstream of Cambodia border
- **Max. capacity:** 260 MW
- Turbines: 4*65 MW
- Construction’s start date: Jan 2015
- Commercial operation: ~2019 (based on company website), May 2018 (based on submitted PC form)
- PNPCA Notification: 30 Sep 2013
- Re-submission for PC: 30 June 2014
- PNPCA PC Process:
  - **Start date:** 25 July 2014
  - **End date:** 24 Jan 2015
Lessons learnt from Don Sahong

1. When do you do PC for a HPP on a distributary?
   o When there is just a possibility of a significant impact on the mainstream.
   o The distributary carried most of flow and fish migration ➔ “Prior Consultation”.

2. Potential impacts mainly came down to a difference in the way countries accepted risks:
   o Different perceptions of notifying and notified countries on 2 potential impacts – flows regulation in other distributaries and fish could use other channels in dry season.
Lessons learnt from Don Sahong (Cont.)

3. **No agreement on how to extend:**
   - A small extension and additional studies would have been useful to gain a better grasp of the risks and pose measures to address these.
   - It was never considered as a realistic possibility.

4. **Stakeholder engagement was better:**
   - Stakeholders still did not have sufficient information about “legal” basis for PC and mandate of the MRC.

Based on the IAP2 Spectrum - https://www.iap2.org/
The Outcome?

NO CLEAR OUTCOME OR AGREED WAY FORWARD
3. The Pak Beng prior consultation process

Pak Beng Hydropower Project
- Oudomxay province, Northern Laos
- 174 km upstream of Luang Prabang
- 1st Cascade of hydropower projects in LMB
- Max. capacity: 912 MW
- Turbines: 16*57 MW
- Construction’s start date: Pending (Jan 2017 – based on submitted PC form)
- Commercial operation: Jan 2024 (based on submitted PC form)
- Mainly for export
- PNPCA PC Process:
  ❖ Start date: 20 Dec 2016
  ❖ End date: 19 Jun 2017
Lessons learnt from Pak Beng

1. Notification at a “feasibility stage” ➔ insufficient information on final potential impacts ➔ catching a moving train.

2. An enabling water diplomacy environment to do things differently was created (clearer end-point, previous lessons, better project, hydro-politics).

3. There was greater engagement of external stakeholders (open & transparent, from the beginning, inform/consult ➔ involve, ongoing engagement – JAP).

4. A greater focus on avoid, minimise and mitigate ➔ opportunity for a set of measures ➔ opportunity for a “Statement” and “post PC Process”

5. Further improved stakeholder process.
CONCLUDED WITH A STATEMENT AND POST PRIOR CONSULTATION PROCESS – Further improvements are possible
4. The Pak Lay prior consultation process

**Pak Lay Hydropower Project**
- Run-of-river project
- Xayaburi province, northern Laos
- 241 km upstream of Vientiane
- 4th cascade of dam projects in LMB
- Installed capacity: 770 MW
- Turbines: 14*55 MW
- Construction date: ~2022
- Operation date: ~2029
- Mainly for export & local consumption
- PNPCA PC Process:
  - **Start date:** 8 Aug 2021
  - **End date:**
A continually improving process

1. For Pak Lay a greater focus on:
   - **Reasonable** and **equitable** use;
   - **Cumulative impacts** and potential development limits;
   - **Comparative impacts tributary and mainstream**, and between developments;
   - Promoting **conjunctive management**;
   - Using the **Council Study**;
   - **Collaboration between stakeholders** – including Lao PDR engagements
Thank you