

Cambodia • Lao PDR • Thailand • Viet Nam
For sustainable development



1995 Mekong Agreement and PNPCA

- Prior Consultation Process and Role of the MRC, MRCS and Member Countries



Regional Public Consultation
12 December 2014
Pakse, Champassak Province, Lao PDR



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Article 1. Areas of Cooperation

To cooperate in all fields of sustainable development, utilization, management and conservation of the water and related resources of the Mekong River Basin including, but not limited to irrigation, hydro-power, navigation, flood control, fisheries, timber floating, recreation and tourism, in a manner to optimize the multiple-use and mutual benefits of all riparians and to minimize the harmful effects that might result from natural occurrences and man-made activities.



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Article 3. Protection of the Environment and Ecological Balance

To protect the environment, natural resources, aquatic life and conditions, and ecological balance of the Mekong River Basin from pollution or other harmful effects resulting from any development plans and uses of water and related resources in the Basin.


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Article 4. Sovereign Equality and Territorial Integrity

To cooperate on the basis of sovereign equality and territorial integrity in the utilization and protection of the water resources of the Mekong River Basin.

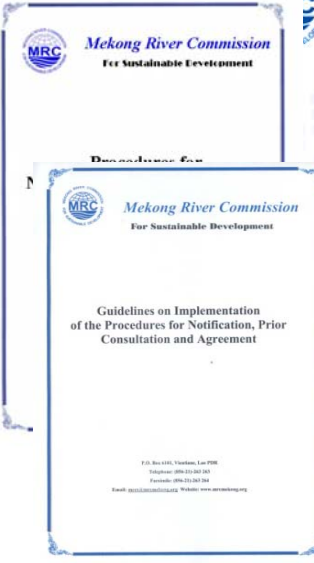
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Article 5 – Reasonable and Equitable Utilisation

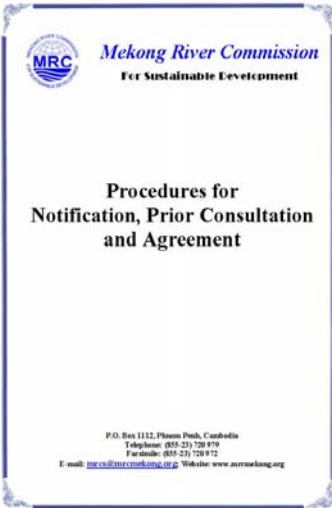


Article 26 – Rules for Water Utilisation and Inter-Basin Diversions



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PNPCA

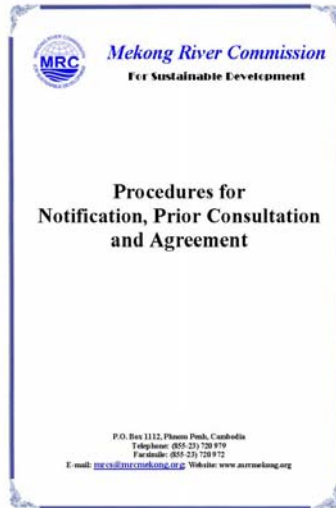


The PNPCA has three separate parts (seen in title):

- Notification – for tributary use and mainstream use, within the basin, in the wet season.
- Prior Consultation – for use of water, within the basin, on the mainstream in the dry season, and for taking water out of the basin (inter-basin transfer) during the wet season
- Specific Agreement – for taking water out of the basin (inter-basin transfer) during the dry season.

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Purpose of the Prior Consultation



Article 5.4.3 of the PNPCA:

The MRC JC shall aim to arriving at an agreement on the proposed use and issue a decision that contains the agreed upon conditions. That decision shall become part of the record of the proposed use and of the record of the use of the waters when commenced.

The notifying State(s) shall not implement the proposed use without providing the opportunity of the other member States to discuss and evaluate the proposed use. The MRC JC shall take note of replies and place in the record for the proposed use of any concerns or reservations made by the notified State(s).

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“Prior Consultation” process aims at reaching agreement between Member Countries on:

- ☞ *Whether the proposed use reflects a reasonable and equitable use of the Mekong River System*
- ☞ *The acceptability or other wise of any possible impacts associated with the construction and operation of the project;*
- ☞ *Proposed measures to avoid, minimise and mitigate these impacts, as agreed upon conditions*
- ☞ *Opportunities for increasing the joint benefits and cooperation relating to the development*

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Process of the Prior Consultation



Submission of document for PC

- Documents and PC Form submitted by Notifying country to the Joint Committee through the MRC Secretariat in a timely manner.
- MRC Secretariat review the documents for completeness and shall transmit copies of the document to other Member States.

Evaluation and Reply to the proposed use

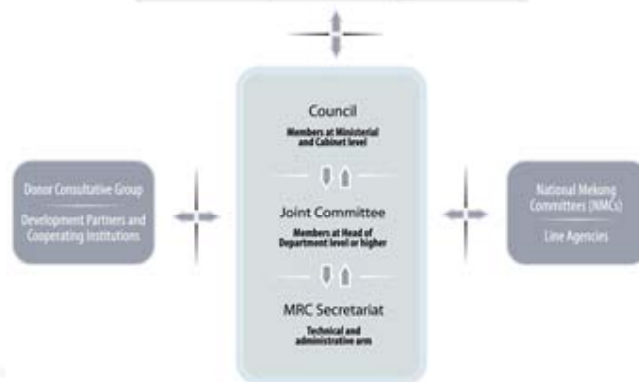
- Notified countries should evaluate the project and reply to the Joint Committee through the MRC Secretariat by using the PC Reply Form.
- Additional information, presentation or field visit can be requested.
- A working group or technical team can be established.

Decision by the MRC Joint Committee

- Joint Committee shall aim to arriving an agreement on the proposed use and issue a decision that contain the agreed upon conditions.
- Timeframe for the Prior Consultation should be months, but can be extended by the decision of the Joint Committee if necessary.

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Mekong River Commission Governance Structure



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Role of the NMCs in PC (Article 5.3.1 of the PNPCA)



- To inform the relevant line agencies of the scope, content and form/format required for Prior Consultation of a proposed use covered by the Procedures;
- To receive, review and check documentation for any Prior Consultation submitted to it to ensure that it is complete and consistent with the content and form/format;
- To assemble and transmit the proposal with appropriate documents to the MRC Secretariat for their submission to the MRC JC and transmission to the other NMCs;
- To facilitate any consultations, presentations, evaluation and site visit as requested by the MRC JC for the proposed use; and
- To record and transmit copies to respective line agencies or party(ies) making the proposal for a definite use of water through the Prior Consultation process of any comments or response received from the MRC Secretariat.

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Role of the MRC Secretariat in PC (Article 5.3.2 of the PNPCA)



- To receive, check for completeness, record and make a file of the documents for PC according to the PC Form/format and replies from notified States according to the PC Reply Form/format;
- To submit the documents for PC to the MRC JC and copy to each other NMCs;
- To review, analyze and provide technical advice to the MRC JC as may be requested by it;
- To supply available additional data and information and facilitate the meetings as requested by member State(s) concerned;
- To provide available technical support for any evaluation. If required, the MRC JC may set up fact-finding team supported by the Secretariat to visit the project site; and
- To enter the relevant data and information into the MRC Data and Information System.

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Role of the MRC Joint Committee in PC (Article 5.3.3 of the PNPCA)



- To acknowledge and review documents of any Prior Consultation submitted to it through the MRC Secretariat;
- To review any comment submitted to it by any member State;
- To carry out consultation on the proposed use among parties concerned with the support of the MRC Secretariat.
- To Set up a Working Group to assist in the Prior Consultation process aiming to arriving at an agreement on the proposed use.
- To make every effort to address any matters that may arise during the process of Prior Consultation.
- To verify and unanimously confirm availability of surplus quantity of water on the mainstream in accordance with criteria approved by the MRC Council under Article 26 of the Mekong Agreement should there be a proposed use for inter-basin diversion in the dry season.

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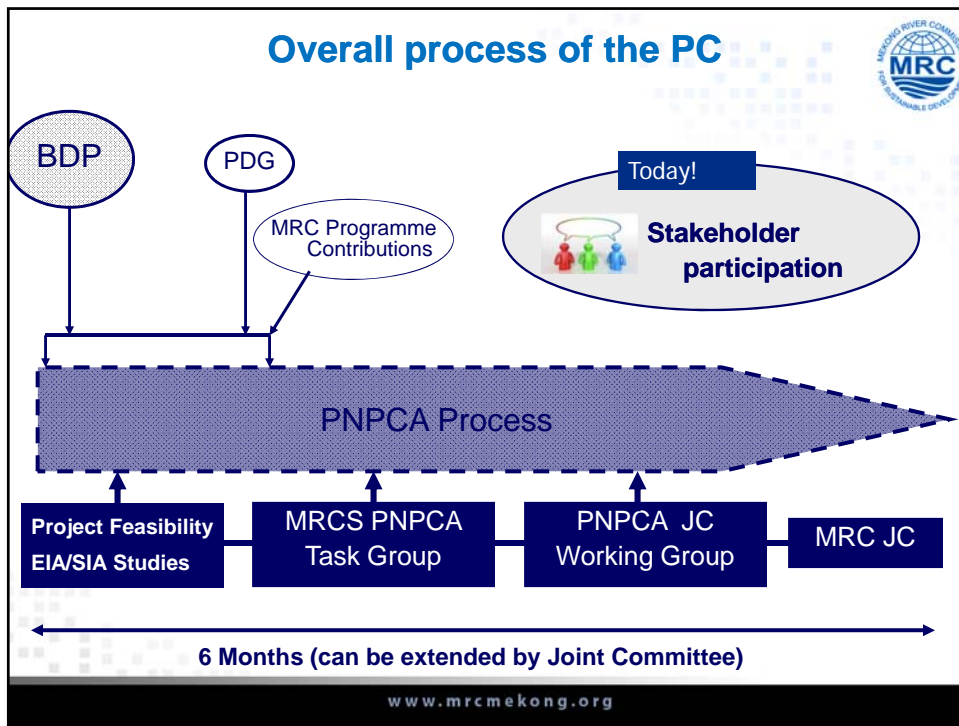
Role of the MRC Council in PC (Article 5.3.4 of the PNPCA)



The function of the MRC Council under the Procedures is in accordance with the stipulation of the Mekong Agreement

☞ To entertain, address and resolve issues, differences and disputes referred to it by any the Joint Committee.

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Prior Consultation MRC & Public Participation

Public participation and involvement is

- ⇒ central to MRC policy framework of IWRM and
- ⇒ is generally required by national legislation

Public participation/involvement has been agreed for Prior Consultation process.

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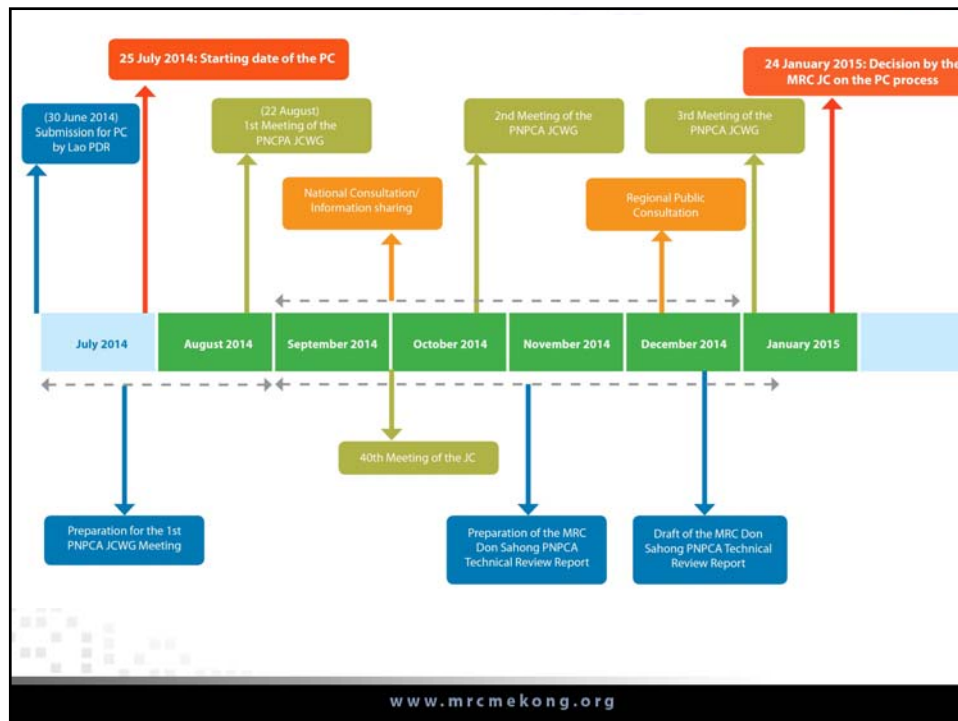
Prior Consultation

For Don Sahong Hydropower Project – some dates



- 30 Sept 2013 ✎ submission by Lao PDR for “Notification” of DSHPP
- 30 June 2014 ✎ letter from LNMCS on “Prior Consultation” of the DSHPP
- 3 July 2014 ✎ MRCS notified other NMCS of the Prior Consultation of the DSHPP submitted by Lao PDR.
- 25 July 2014 ✎ Official starting date of the Prior Consultation process

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