



Procedures for Notification, Prior Consultation and Agreement (PNPCA)



What is MRC?

The Mekong River is one of the world's largest rivers and runs through six countries in Southeast Asia from China to Viet Nam. Governing the river basin in a sustainable, equitable manner has been a challenge for Mekong countries, yet it also presents an opportunity for collaboration.

The **Mekong River Commission (MRC)** is an inter-governmental organisation working towards sustainable development through dialogue and cooperation within the lower Mekong basin. Established by a 1995 agreement between Cambodia, Lao PDR, Thailand and Viet Nam, it offers a wealth of scientific knowledge

and technical expertise on water resource management, and serves as a platform for water diplomacy to support water negotiations among the four countries.

Within an agreed legal framework, these riparian countries with different national interests and priorities discuss their needs and challenges in development, and negotiate better use of shared water resources for the benefits of the region and its 65 million people.



Cambodia



Lao PDR



Thailand



Viet Nam

What is PNPACA?

Over the last two decades, the MRC has developed five sets of procedural rules on water quality, data sharing, water use monitoring, water flow maintenance, and water use cooperation to support the implementation of the 1995 Mekong Agreement. One of them is the **Procedures for Notification, Prior Consultation and Agreement**, known as **PNPACA**, which was adopted in November 2003.

PNPACA is a set of three separate processes undertaken by MRC member countries for

certain projects using water from the Mekong basin, which may significantly alter water flow or water quality of the Mekong mainstream. Such projects may include large-scale irrigation, hydropower and water supply.

It is designed to achieve optimum use of water resources while mitigating adverse impact on the environment and livelihoods of riverine communities both upstream and downstream.

How is PNPCA applied?

Under the PNPCA, any water-use project must undergo either the process of Notification, Prior Consultation or Specific Agreement. None of

the processes involve approval or disapproval of a proposed project. Rather, the PNPCA is a mechanism to support regional cooperation on water use.



Notification requires a country proposing a project to notify the details of the project to other member countries before it commences the proposed use.



Prior Consultation involves a six-month process of technical evaluation and formal consultations, where notified member states have an opportunity to assess any potential transboundary impact on eco-systems and livelihoods, and to recommend measures to address those issues before water is used.



Specific Agreement requires a thorough negotiation to achieve a consensus on terms and conditions of the proposed project among all member states prior to the proposed use of water.

The application of each of the three processes depends on three factors of water use: the **type of river** (mainstream or tributary), the **season** (dry or wet), and **scope of water-use** (inter-basin or intra-basin). A mainstream project normally requires a more complex process than a tributary project. Dry season water-use must go through a more demanding

process than that of wet season. Likewise, inter-basin diversion, where water is diverted from the Mekong basin to another river basin, needs to undergo a more thorough process than intra-basin water use, where water remains within the Mekong basin. The table below shows the determining factors and their corresponding processes.

Type of River	Season	Scope of water-use	Required procedure
 Mainstream	 Dry	Inter-basin (from the Mekong basin to another basin)	 Specific Agreement
		Intra-basin (within the Mekong basin)	 Prior Consultation
	 Wet	Inter-basin (from the Mekong basin to another basin)	 Prior Consultation
		Intra-basin (within the Mekong basin)	 Notification
 Tributary	 Both	Both inter and intra-basin	 Notification

How does Prior Consultation work?

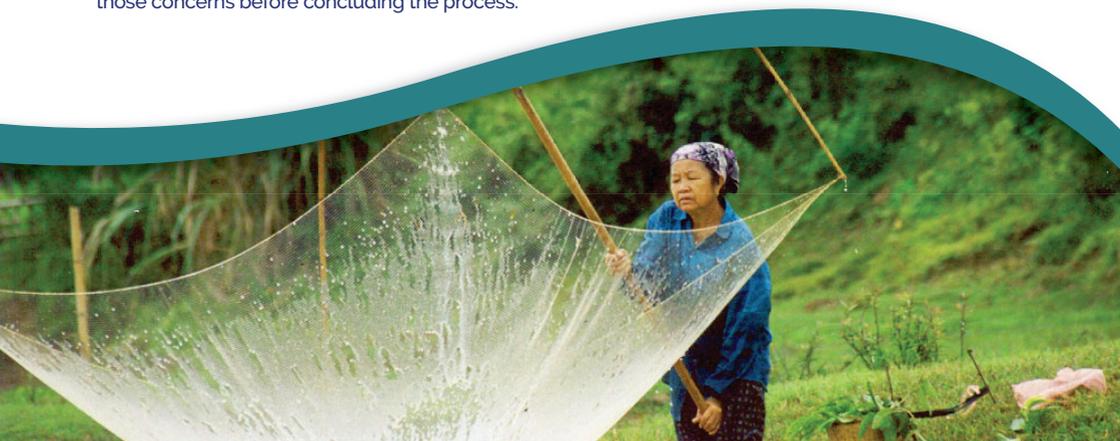
The prior consultation process goes through several steps to complete, based on the PNPCA and Mekong Agreement.

Step 1 A member country proposing a project notifies the MRC Secretariat about its intention to undertake the prior consultation process, and submits a detailed project document. Within the next one month, the secretariat reviews the document and verifies its completeness with reference to the rules before forwarding the case to the Joint Committee (JC); the MRC's management body consisting of representatives of the four member governments where the consultation takes place.

Step 2 The prior consultation starts when all members of the JC receive the notification with the project document. In the next six months, the JC reviews technical aspects of the project to determine compliance with the MRC procedures on flow regime and water quality, assesses any possible impact on environment and livelihoods, and suggests measures to address those concerns before concluding the process.

Technical evaluation: As part of the technical assessment, the JC assigns the member countries and the secretariat to form a special working group to review aspects such as dam safety, fish migration, sediment flow, navigation, and environmental and socio-economic impact. The MRC's tools and guidelines, including *The Preliminary Design Guidance for Proposed Mainstream Dams*, assist the technical assessment. Field visits to the project site also take place during this phase.

Consultations: To hear concerns and views of the public and interested parties, consultations at both national and regional levels are conducted by the MRC Secretariat and the National Mekong Committee (NMC) of each member country, the governmental body that coordinates MRC's work nationally.





Step 3 By the end of the consultation period, the JC aims to come to a unanimous agreement on what conditions the case should proceed with. This agreement is not meant to approve or disapprove the proposed project. Rather, it is designed for the notified countries to make recommendations, and for the proposing country to accept certain measures, to mitigate any potential adverse impact and to find a better way to share the benefits. If the JC requires more time for discussion, the period of prior consultation can be extended.

Step 4 Once the consultation is over, the proposing country may proceed with the project. If the JC is unable to come to an agreement, however, the JC can refer the case to the MRC Council, the organisation's highest decision-making body consisting of ministers of the four member governments, for resolution.

Step 5 If the Council is unable to resolve the matter, the case will be referred to the concerned governments to resolve through normal diplomatic channels.

Prior Consultation Process Framework





How was PNPCA implemented?

Since 1995 until the end of 2016, the MRC has received a total of 53 submissions of water-use projects under the Mekong Agreement and its subsequent PNPCA. Fifty submissions were made for Notification, three for Prior Consultation, and none for Specific Agreement.

Among the 50 Notification cases, 45 are on the tributaries and five are on the mainstream. Of these projects, 39 are for hydropower and others include projects for irrigation, drainage, and flood control. Lao PDR and Viet Nam have submitted the vast majority of Notification cases.

Projects submitted for Notification include Cambodia's hydropower project proposed on the Sesan tributary in the northeast province of Ratanakiri in 2010; Thailand's 1995 proposal to study a plan to divert water from the Kok and Ing tributaries to the Chao Phraya river basin in the northern provinces of Chiang Rai, Phayao and Nan; and Viet Nam's large-scale irrigation project in the central province of Dak Lak proposed in 2005.

All three Prior Consultation cases, meanwhile, concern hydropower projects on the Mekong mainstream within Lao PDR. The first case was Xayaburi, a run-of-river 1,285-megawatt dam project in the northern province of Xayaburi. It was notified in September 2010, and went through a six-month consultation from October 2010 to March 2011.

The second was Don Sahong, a 240-megawatt dam to be built on one of the braided channels in the Mekong's Siphandone (4,000 islands) near the Lao-Cambodia border. The case was first submitted for the process of Notification in September 2013 and later re-submitted for Prior Consultation in June 2014, and it underwent the six-month prior consultation from July 2014 to January 2015.

The latest project submitted in November 2016 is for a run-of-river dam to be constructed in Pak Beng in the northern province of Oudomxay. Its prior consultation began in December 2016 and is to continue until June 2017.

Notification



50
submissions

Prior Consultation



3
submissions

Specific Agreement



0
submissions

What impact did PNPCA make?

The first two prior consultation processes of Xayaburi and Don Sahong were test cases for the MRC's hydropower diplomacy. In both processes, the member countries and the secretariat thoroughly followed through the steps stipulated in the procedures, but no resolution was reached at either the JC or the Council level.

However, both cases offered opportunities for member countries to sit together and review the development projects of their sovereign neighbour, and to address concerns over their territories and people. The processes also provided legitimacy for other interested parties to have their voices heard.

In the case of Xayaburi, the process prompted the Lao government and the dam's developer

to conduct its own environmental impact assessment and to decide an additional investment of US\$400 million to revise the dam's design in order to address issues of fish migration and sediment; two of the main concerns raised during the prior consultation.

Both the member countries and the secretariat of the MRC have since reviewed and discussed various aspects of the PNPCA to improve its application, including adequacy of documentation and timing of information-sharing. Some of these lessons will be reflected in the consultation process of the future cases.

For more information on PNPCA:

Visit the MRC website: www.mrcmekong.org

On Procedures: www.mrcmekong.org/publications/policies-procedures-and-guidelines/

On Prior Consultation: www.mrcmekong.org/topics/pnpca-prior-consultation/

Contact the MRC Secretariat

P.O. Box 6101, Unit 18 Ban Sithane Neua, Sikhottabong District, Vientiane 01000, Lao PDR

Tel: +856 21 263 263 Fax: +856 21 263 264

Emails: mrcs@mrcmekong.org (general);

mrcmedia@mrcmekong.org (press)





© Mekong River Commission

Published in December 2016.

This publication is intended for public information and it is not an official *MRC Procedures* document.

