



Mekong River Commission

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No. L-OSV 187/16

9 May 2016

Dear Mr Ghezraoui,

Subject: Letter from the Office of the High Commissioner for Human Rights with regard to the Don Sahong Hydropower project in Lao PDR

Reference is made to the communication from the Special Procedures Branch from the Office of the High Commissioner for Human Rights on the allegations of human right valuation in connection to Don Sahong Hydropower project in Lao PDR.

I note the information provided in the communication with regard to the allegations of human rights violations against the population living along the banks of the Lower Mekong River (which spans Cambodia, Lao PDR, Thailand and Viet Nam) as a result of the Don Sahong dam project in the territory of Lao PDR. I also note that a letter concerning this case has been sent to the Government of Lao PDR and Mega First, the private Malaysian company responsible for the construction and operation of the Don Sahong Hydropower project. As requested, I have also shared this communication with the other members of the Mekong River Commission: Cambodia, Thailand and Viet Nam, as well as Lao PDR.

The Mekong River Commission (MRC) considers the issues raised in the communication with regard to allegations of human rights violations as a result of the Don Sahong dam project of high importance especially in terms of extraterritorial issues raised. This letter attempts to provide information wherever possible with regard to the issue, within the mandate and role of the Mekong River Commission. The communication specifically requested that the MRC provide information with regard to three areas of focus. So, please find the MRC's response to this request for information below (and in the attached tables).

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Mr. Karim Ghezraoui

Chief a.i.

Special Procedures Branch

Office of the High Commissioner for Human Rights

Palais Des Nations

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1. Provide additional information and/or comments on the allegations.

The communication raises detailed issues with regard to human rights including rights to information, participation, food, health and housing, as well as their cultural rights, and the rights of indigenous peoples in the area due to the Don Sahong Dam. Attached in Table 2 is the MRC's response to the specific issues raised in the communication. In the case of any development within the Lower Mekong Basin it is the responsibility of the Member Country undertaking a development project within their respective state to adhere to all relevant legislation, both domestic and international. The MRC becomes specifically involved where the 1995 Mekong Agreement applies.

In understanding the MRC's roles and responsibility in the case of the Don Sahong Hydropower project the following information needs to be considered:

- MRC - mandate, structure and function of the MRC under the Mekong Agreement
- Procedures for Water Utilisation in the Lower Mekong Basin
- Procedures for Notification, Prior Consultation and Agreement
- Process followed for Notification and Prior Consultation for Don Sahong Hydropower project
- Technical Review of the Don Sahong Prior Hydropower Project
- Public Consultation for the Don Sahong Prior Consultation process
- Conclusion of the Don Sahong Prior Consultation process

This information is detailed further below.

Mekong River Commission – mandate, structure and function

On April 5 1995, in Chiang Rai, Thailand the four riparian nations of the Lower Mekong Basin – the Governments of the Kingdom of Cambodia, the Lao People's Democratic Republic, the Kingdom of Thailand and the Socialist Republic of Viet Nam – signed the Agreement on the Cooperation for the Sustainable Development of the Mekong River Basin (1995 Mekong Agreement) and Protocol for the Establishment and Commencement of the Mekong River Commission.

The MRC is an independent intergovernmental organisation and is able to enter into agreements and obligations with the donor or international community. There are three bodies that comprise the MRC – the Council, the Joint Committee and the Secretariat. The MRC Council makes policy decisions on behalf of Member Governments that are necessary to the successful implementation of the 1995 Agreement. The MRC Council which is represented by cabinet ministers of the four Member Countries, meets once a year. The MRC Joint Committee (JC) implements the policies and decisions of the Council and performs other tasks as assigned by the Council. The Joint Committee, which meet twice a year to discuss and approve budgetary and strategic planning matters, is represented by senior government officers. The MRC Secretariat, provides technical and administrative support and currently has 90 staff members.

The 1995 Mekong Agreement provides a framework that enables and requires the MRC to adopt and refine, as needed, rules and procedures to carry out its work in close cooperation and coordination with relevant agencies and people of the Member Countries. It identifies key activities and mechanisms that support the sustainable equitable use, utilisation and protection of the Mekong's water and water related resources for Member Countries.

Procedures for water utilisation in the Lower Mekong Basin

Through the 1995 Mekong Agreement, the MRC governs the allocation and utilisation of the Mekong River waters by the four countries. There are five Procedures that set the rules for water utilisation in the Lower Mekong Basin to support the objective 1995 Mekong Agreement, namely:

- Procedures for Data and Information, Exchange and Sharing
- Procedures for Maintenance of Flows on the Mainstream
- Procedures for Water Use Monitoring
- Procedures for Notification, Prior Consultation and Agreement
- Procedures for Water Quality

Procedures for Notification, Prior Consultation and Agreement

The Procedures for Notification, Prior Consultation and Agreement (PNPCA) are primarily based on Article 5 of the 1995 Mekong Agreement in which the Member Countries agree “to utilize the waters of the Mekong River system in a reasonable and equitable manner in their respective territories, pursuant to all relevant factors and circumstances, the Rules for Water Utilization and Inter-basin Diversion provided for under Article 26 and the provisions of A and B”.

Pursuant to Article 5, notification to the MRC JC is required for intra-basin uses and inter-basin diversions on the tributaries of the Mekong, and for intra-basin uses of the Mekong during the wet season. ‘Notification’ is defined as the timely provision of information concerning the proposed use of water to the MRC Joint Committee.

Article 5 also requires the Member Countries to undertake prior consultation with a view to reaching agreement on inter-basin diversions on the mainstream of the Mekong during the dry season. ‘Consultation’ is defined as not only providing data and information but also discussing and evaluating impact of such proposed uses by the MRC JC. There is also a provision within Article 5 that the MRC JC shall agree upon any inter-basin diversion during the dry season through a ‘Specific Agreement’.

The PNPCA provides steps for MRC Member Countries to support the establishment of Rules for Water Utilisation and Inter-Basin Diversions and to promote better understanding and cooperation among the MRC Countries in a constructive and mutually beneficial manner to ensure the sustainable development, management and conservation of the water and related resources in the Mekong River Basin. The PNPCA outlines:

- Scope of notification, prior consultation and agreement
- Content and Form/Format of notification, and prior consultation
- Institutional mechanism for notification, and prior consultation
- Roles, functions and responsibilities of the NMCs, MRC Secretariat, JC and Council under the Procedures
- Process for notification, and prior consultation and agreement – including submissions of documents, evaluation and reply to proposed use, decision by JC
- Timing for and absence of notification, and prior consultation

Prior Consultation is **not a decision-making process**, as the MRC does not have regulatory powers, but rather a tool for regional cooperation, information sharing and technical review.

Process followed for Notification and Prior Consultation for Don Sahong Hydropower Project

The Don Sahong Hydropower Project (DSHPP) was, firstly, submitted for Notification under the PNPCA by Lao PDR on 30 September 2013, as they did not consider the project to fall on the mainstream of the Mekong River. After the MRC Secretariat forwarded the submission to the other three Member Countries on 3 October 2013, the MRC JC of the notified Countries (Cambodia, Thailand, and Viet Nam) expressed the opinion that the DSHPP should be submitted for Prior Consultation, as a mainstream activity.

At the 20th MRC Council Meeting on 26 June 2014, Lao PDR stated that the DSHPP would be re-submitted for the Prior Consultation process. A letter to this effect was received by the Secretariat from the LNMC on 30 June 2014, along with confirmation of the list of relevant documents originally submitted in September 2013. The Secretariat submitted the letter and list to the MRC JC members from the other three Member Countries on 3 July 2014. The MRC Secretariat subsequently requested that the Lao National Mekong Committee (LNMC) make any additional documents available through the appropriate channels, as and when they are completed. On 25 July 2014, the LNMC indicated that the Developer's (Mega First) website should be used to source any additional reports. It was subsequently decided by the JC at its 40th Meeting on 1st October 2014 that the formal starting date for Prior Consultation would be 25 July 2014. Thus, the six-month Prior Consultation period provided for in Article 5.5.1 of the PNPCA consequently ended on 24 January 2015.

Technical Review of the Don Sahong Hydropower Project

As part of the Prior Consultation process for the Don Sahong Hydropower Project, a Technical Review was undertaken supported by 6 Expert Groups, the: Fisheries and Fish Passage Group; Dolphin Group; Hydrology Group; Water Quality and Ecosystems Group; Sediment Group and Socio-Economic Group and overseen by the PNPCA JCWG (<http://www.mrcmekong.org/assets/Publications/Consultations/Don-Sahong/Technical-Review-Report-DSHPP-040315.pdf>).

The Technical Review Report was prepared by the MRC Secretariat for the MRC Joint Committee. It was prepared under guidance from the Joint Committee Working Group (JCWG) for Prior Consultation on the Don Sahong Hydropower Project, and included guidance provided by the JCWG from its final meeting on 9 January 2015. Its intention was to provide the JC with information that may be needed to support their discussions leading to an agreement with conditions (PNPCA – Article 5.4.3), or the extension of the Prior Consultation process (PNPCA – Article 5.5.2).

The Report included assessments of the possible impacts of the DSHPP, the likely extent of those impacts, the level of confidence in these assessments and the likely efficacy of mitigation measures proposed by the developer. The report aimed to provide a level playing field for discussions through a robust and scientifically sound evaluation of all **available information and data (as provided by Lao PDR or Mega First)**, in so far as the initial timeframe for prior consultation has allowed. The JC, in pursuance of considering all relevant factors when considering whether the DSHPP reflects a reasonable and equitable use of the

Mekong River System ('95 Mekong Agreement Article 5), could also consider other matters not covered in this Report.

The Report drew on the following documents and information:

- The Expert Groups' evaluations of the documents submitted by the Lao National Mekong Committee;
- The Report on the Public Consultation Process in support of Prior Consultation on the DSHPP, and the documents submitted as part of that process;
- The agreed IWRM-based Basin Development Strategy and its Scenarios;
- The MRC Preliminary Design Guidance for Proposed Mainstream Dams (PDG); and
- Indigenous knowledge and information gained during site visits.

The Technical Review Report, was supported by the following Annexes, which formed part of the Report:

- Annex A1: Prior Consultation Road Map
- Annex A2: List of International, Regional and MRCS Expert contributors.
- Annex B: Alignment with the MRC PDG
- Annex C: Fisheries Report
- Annex D: Dolphin Report
- Annex E: Hydrology and Hydraulics Report
- Annex F: Water quality and Ecosystems Report
- Annex G: Sediment Report
- Annex H: Socio-Economic Report

Public Consultation

Public Consultation on the Don Sahong Hydropower project was undertaken in Cambodia, Thailand and Viet Nam with a total of 14 national public consultations and 1 regional public consultation (refer to Table 1 for more detail). Reports on the national public consultations for Thailand and Viet Nam, and the regional public consultation can be viewed at <http://www.mrcmekong.org/news-and-events/consultations/don-sahong-hydropower-project/>.

Statements on the Don Sahong Hydropower Project from NGOs and from the regional consultation process undertaken can be viewed via the MRC website at: <http://www.mrcmekong.org/about-mrc/programmes/initiative-on-sustainable-hydropower/strategic-environmental-assessment-of-mainstream-dams/stakeholder-submissions/>.

The MRC Prior Consultation Process for the Don Sahong Hydropower Project, including the Technical Review, PNPCA JCWG meeting and site visit, and Regional and National Public Consultations, costing in total US\$393,048.

Conclusion of the Don Sahong Prior Consultation process

The main issues raised through the Technical Review and Public Consultation included:

- Impact of the development on the local fisheries, especially on migratory fish requiring fish migration upstream and downstream, and due to changes in hydrology, and decline in fish production

- Impact on the Irrawaddy Dolphin population, including the reduction in the availability of prey for food for the population and impacts from construction noise and vibrations
- Impact on Social and economic conditions due particularly to adverse impacts on fisheries
- The need for attention to the impact and adequacy of hydraulic modelling
- Impact of sediment loads
- The need for further and extensive consultation
- The need for further information to reduce uncertainty with the availability of data to assess impacts and thus reduce uncertainties with the impacts of the project
- The need for recommended mitigation measures and monitoring of impacts to ensure the impacts are not substantial

These issues were referred to the MRC JC for consideration with the three notified countries, requesting an extension of time to resolve outstanding issues. However, the JC was unable to agree unanimously on a way forward (refer below under Question 2 for further information)

2. Provide information on what steps the MRC has taken to reach an agreement on the Don Sahong development project aiming at protecting and promoting human rights of the affected population? Has the MRC Council met to discuss the issue? How does the MRC plan to enforce the decision of the Council in the future?

The 1995 Mekong Agreement stipulates that the Council and JC must reach a ‘unanimous’ result in order to implement a decision, unless otherwise provided for in the Procedures. The MRC must make effort to resolve disputes between two or more Member Countries regarding matters covered by the 1995 Agreement. If the MRC is unable to resolve a dispute in a timely manner, the dispute shall then be referred to the Member Countries’ governments to resolve through diplomatic channels.

The Prior Consultation process was undertaken by the MRC with the intention of providing an opportunity for the notified states to understand, review, assess, consult and provide comments on the design and construction of the Don Sahong Hydropower Project. As highlighted above this was supported by the Technical Review process and Regional and National Public Consultations, as well as meetings of the PNPCA JCWG and site visit.

On 28 January 2015, a Special Session of the MRC Joint Committee was organised. The Meeting was unable to reach consensus on the way forward with the three notified countries requesting and extension of time to the Prior Consultation to resolve outstanding issues. The JC therefore agreed to report the outcome of the Special Session to the MRC Council for information and seeking further guidance on the project. Further deliberations amongst the Council Members and the Council Chairperson occurred and, finally, the MRC Council decided in June 2015 to refer the issue to the national governmental level for further resolution. This is in line with the PNPCA process - in absence of an agreement between all parties.

Under the PNPCA and the Mekong Agreement where there is an absence of agreement, a decision cannot be enforced. The agreement emphasises cooperation and seeks to facilitate good faith with regard to water and water related developments within the Lower Mekong Basin. However, prior consultation is neither a right to veto the use, nor a unilateral right to use water by any riparian within taking into considerations of other riparians’ rights. The

MRC is not a regulatory or decision-making body with regard to proposed development within the Lower Mekong Basin.

3. Provide information on what the MRC plans to do to address concerns arising from the Don Sahong project with a view to promoting and protecting human rights of all groups potentially impacted by this project, through regional cooperation and assistance.

The Don Sahong Hydropower Project was the second Prior Consultation process undertaken by the MRC, the first being the Xayaburi Hydropower Project (2011) in Lao PDR. The implementation of the PNPCA for the Prior Consultation processes for the Xayaburi and Don Sahong Hydropower projects have provided an opportunity to road test the application of the PNPCA and guideline and learn from these experiences. From both, the point of view of the notifying country and the notified countries.

The implementation of these two Prior Consultation process through these two projects raised issues around the interpretation of the PNPCA and guideline in terms of timely notification, length of time of consultation (and requests to suspend or extend), timely disclosure of “available” and “relevant” data and information, the need for transboundary Environmental Impacts Assessments, timing of commencement of a proposed use; post-consultation Procedures (process after the six-month timeframe), and the role of the MRC JC and MRC Council in implementing the procedures. Further issues around definitions within the PNPCA also demonstrated ambiguities in the procedures implementation including but not limited to: wet and dry season, water use/utilization and significant tributaries.

The MRC is concerned about the issues experienced as part of the Prior Consultation process and as a consequence recently held through the MRC Joint Platform, (formed to address issues with the Five Procedures) the Dialogue Workshop on Lessons Learnt from the Implementation of PNPCA on 25 February 2016 in Bangkok which was attended by all Member Countries and Thai civil society. Whilst many issues were raised with public consultations, specific concerns were not raised through this workshop with regard to human rights issues for the Don Sahong Hydropower Project. Further work will be undertaken by the MRC to address the issues raised through the lessons learnt process with a view to improving the process.

The MRC is concerned about the human rights issues raised with regard to the Don Sahong project, and also such issues potentially arising in the future. The MRC acknowledges that it has limited in-house capacity in this area of expertise and seeks advice from OHCHR on strategies to put in place to ensure that regional responsibility for human rights is exercised. The MRC has shared the communication with all Member Countries, and would be supportive of any opportunities for the OHCHR to meet with the MRC on building capacity of the MRC Secretariat, and the National Mekong Committees and line agencies of the four Member Countries.

I look forward to hearing from you and any further advice you may have on this matter. Please do not hesitate to contact me further should you require any further clarification on this matter or other matters in the future.

Yours sincerely,



Pham Tuan Phan
Chief Executive Officer
MRC Secretariat

Table 1 : Summary of the Prior Consultation Process for the Don Sahong Hydropower Project	
Category	Don Sahong
Process duration (From when to when)	➤ Notification: ○ 30 Sept. 2013 – Lao PDR submitted the DSH for Notification ○ 03 Sept. 2013 – MRCS submitted to the NMCs. ○ 16 Jan. 2014 – Special Session of the JC to decide on process for the DSH ➤ PC Process: ○ 30 June 2014 – Lao PDR re-submitted the DSH for PC process ○ 03 July 2014 – MRCS submitted documents to NMCs, and requested additional information from LNMC ○ <u>25 July 2014 – Starting date of the PC process</u> as agreed by the JC at its 40th JC Meeting on 1st October 2014 ○ <u>24 Jan. 2015 – End of the 6 month timeframe</u>
PNPCA Joint Committee Working Group (JCWG) Meeting (how many meetings organized? when and where?)	- 1st PNPCA JCWG – 22 Aug. 2014, in Vientiane - Regional Technical Workshop on Fisheries – 28 Oct. 15, in Vientiane - 2nd PNPCA JCWG – 19 Nov. 2014, in Siem Reap - 3rd PNPCA JCWG – 09 Jan. 2015, in Vientiane - Special Session of the JC – 28 Jan. 2015, in Vientiane
Public consultation (national and regional consultation - when and where?)	- In Cambodia: ○ 1st meeting – 16-17 Oct. 2014 in Stung Treng Province ○ 2nd meeting – 30-31 Oct. 2014 in Battambang Province ○ 3rd meeting – 12 Nov. 2014, Phnom Penh ○ 4th meeting – 08 Dec. 2014, Phnom Penh - In Thailand: ○ 1st meeting – 10 Nov. 2014, in Ubon Ratchathani Province ○ 2nd meeting – 12 Nov. 2014, in Nakhon Phanom Province ○ 3rd meeting – 15 Dec. 2014, in Chiang Rai Province ○ 4th meeting – 16 Dec. 2014, in Nongkhai Province ○ 5th meeting – 17 Dec. 2014, in Loei Province ○ 6th meeting – 7 Jan. 2015, in Bangkok - In Viet Nam: ○ 1st meeting – 25 Sept. 2014, in Can Tho ○ 2nd meeting – 22 Dec. 2014, in Hanoi ○ 3rd meeting – 23 Dec. 2014, in Can Tho ○ 4th meeting – 24 Dec. 2014, in Can Tho - Regional Public Consultation – 12 Dec. 2014, in Pakse, Lao PDR

Table 1 : Summary of the Prior Consultation Process for the Don Sahong Hydropower Project	
Category	Don Sahong
Number of expert involved (international expert and riparian expert)	- 10 International consultants - 4 Riparian consultants <i>Please refer to the list of expert involved in the technical review report.</i>
Cost (breakdown into meeting cost and expert cost)	- Consultant cost = \$166,981.07 - Meeting (PNPCA JCWG and site visit) = \$84,027.24 - National Consultation = \$142,040.11 <u>TOTAL = \$393,048.42</u> <i>Note: the MRCS originally applied an equal modality (25,000US\$ to each NMCs) to financially support the national consultations, but it did not work. It ended up with different and more support to each NMCs.</i>
Report (what reports were produced to support the prior consultations)	- Technical Review Report (available online) - Report on national public consultation (available online – only Thailand and Viet Nam) - Report on regional public consultation (available online)

Table 2 : MRC's Response to the Issues Raised in the Communication from the OHCHR	
Issue	MRC's response to the issue raised
<i>Details of the Don Sahong project and process</i>	
The 2007 Technical Review by MRC on the Lao Government's initial EIA identified problems with proposed mitigation efforts, inadequate diligence regarding the probable impacts and poor disclosure of project design details and relevant information. Following this review, Lao PDR did not approve the 2007 EIA.	The MRCS received letter note on 26 Sep 2007 from Lao PDR requesting MRCS to review EIA Vol.1&2 of the Don Sahong Hydropower Project. At the preparatory meeting of 14 th meeting of the MRC Council, the Council members encouraged the MRCS to be of assistance to Member states with regard to national government requests for provision of advice or technical expertise. MRCS conducted the EIA review on the basis of completeness, accuracy and adequacy. Review result is attached herewith.
In 2010, the MRC recommended a moratorium on dam building on the Mekong mainstream for ten years, until further studies could be carried out.	The SEA team provided one of the recommendations in the final SEA report as "decisions on mainstream dams should be deferred for a period of ten years (strategic option 2) with review every three years to ensure that essential deferment period activities are being conducted effectively".
In September 2013, Lao PDR notified the MRC of its intention to build the Don Sahong dam while simultaneously releasing a new EIA.	This is correct.
The MRC members – Cambodia, Thailand and Viet Nam strongly opposed the Don Sahong Project and demanded the project go through the "Prior Consultation" procedure pursuant to the PNPCCA.	This is correct.
In June 2014, Lao PDR agree to submit the Don Sahong project to the "Prior Consultation" process.	This is correct.
The MRC coordinated a technical review of the project to assess its impacts on the Mekong River mainstream's flow regimes, water quality, and other environmental and socio-economic conditions. Published in February 2015, the report concluded that the effects would be significant and substantial because 'the loss of fisheries for some local and immediately upstream and downstream communities could remove their only livelihood'.	This is correct. Refer to more detail on the Technical Review in letter above. The report can be found at: http://www.mrcmekong.org/assets/Publications/Consultations/Don-Sahong/Technical-Review-Report-DSHPP-040315.pdf
At a MRC Joint Committee meeting held in Vientiane, Lao PDR, on January 28, 2015, the Governments of Thailand, Cambodia and Viet Nam submitted their final positions on the Don Sahong project. They maintained strong opposition	This is correct and follows the process of the PNPCCA process where agreement cannot be reached by the JC and Council.

Table 2 : MRC's Response to the Issues Raised in the Communication from the OHCHR	
Issue	MRC's response to the issue raised
to the Don Sahong Dam, calling for an extension to the PNPCA process and urging that the project be suspended for pending further studies, including the assessment of transboundary impacts. To date, Lao PDR and the MRC have reportedly not reached an agreement on how the project should be handled, and the issue has been subsequently referred to the MRC Council, to be discussed at the Ministerial level.	
Reports suggest that the preparatory construction for the Don Sahong had already begun in December 2013.	The MRC is not privy to this information.
The National Assembly of Lao PDR reportedly approved the concession agreement in August 2015 and the full-scale construction has reportedly started in late November 2015. On the current timeline the dam construction is expected to be completed by early 2018 with commercial operations beginning in early 2020.	The MRC is not privy to this information.
<i>Rights to information and participation</i>	
No adequate and complete impact assessment has been conducted to date, and there are gaps in the existing information about project impacts and proposed mitigation measures. For instance, it is alleged that the projects potential impacts on food security and health, living conditions, adequate housing and livelihood sources were never fully explored nor sufficiently studied.	The MRC suggests that clarification be sought from Lao DPR and Mega First on the overall impact assessment processes for the Don Sahong Hydropower project.
Mitigation measures appear to be ineffective and scientifically unproven. For example, Lao PDR proposed re-engineering nearby channels making them wider and deeper in places and diverting much of the Mekong Rivers water to flow through the Hou Sahong channel to allow for fish migrations. Mitigation plans also included trap and transport systems. However, it is reported that such measures are ineffective at reducing large species mortality and unlikely to preserve fish populations. Furthermore, up-to-date and complete engineering details and studies that support these claims have not been provided.	The MRC is not privy to this information. In the Technical Review Report this issues was raised and recommendations made to ameliorate the issue.
The lack of information on the Don Sahong dam made it impossible to identify	The MRC suggests that clarification be sought from Lao PDR and Mega

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Issue	MRC's response to the issue raised
the actual social, economic, human rights and environmental impacts of the project including its transboundary impacts.	First on the level of information provided on these issues, including transboundary impacts of the project. The Technical Review Report highlighted a lack of data availability to create uncertainty with regards to impact.
The affected population was not allowed to fully and meaningfully participate in the planning and decision-making process related to the projects. While some of the affected villages near the proposed dam construction site in Lao PDR, many affected communities including those living up and downstream of the project site in Thailand, Cambodia and Viet Nam have not been properly informed about the project, consulted or given an opportunity to participate in matters related to the project.	The PNPCA does not establish a Pre-Consultation process. The issue of Pre-Consultation was raised as an issue for consideration in the recent PNPCA Lessons Learnt workshop held by the MRC in February 2016. Pre-Consultation would most likely occur within the requirements of the notifying Member Countries' obligations under domestic and international law rather than the PNPCA. The MRC would support further clarity on the need for Pre-Consultation and when is the most useful time in the design and planning process would be for engaging other parties. With regards to information sharing with member states under the Prior Consultation process, the MRC provided support to Cambodia, Thailand and Viet Nam to organize national consultation/ information sharing related to DSHPP as outlined in Table 1.
<i>Rights to food, health, housing and cultural rights</i> The Don Sahong dam is believed to seriously affect approximately 30 per cent of wild fish (3.9 billion tons of fish, valued at US\$3.9-7 billion) and therefore pose a serious threat to the livelihoods of millions of people, including their fisheries, with repercussions for the region's economy and for human rights of those who depend on the river.	We can refer only to our Technical Review Report.
Fish consumption is the most important source of protein for many people living in the Mekong Region. The reduction of migratory fish is likely to generate significant insecurity for the Mekong people and the loss of an essential food and protein source may result in malnutrition while posing a risk to their health.	The Technical Review Report highlighted that there was the potential to have a substantial impact on fisheries and livelihoods. However, this impact would need further analysis of baseline information and potential impacts caused by the Don Sahong Hydropower Project to create a clearer understanding of this impact.
The decreasing fish supply will likely increase fish prices in the market, leaving people living in poverty unable to afford fish or to be forced to migrate due to	The Technical Review Report highlighted that there was the potential to have a substantial impact on fisheries and livelihoods. However, this

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Issue	MRC's response to the issue raised
Inadequate of livelihoods. There is no guarantee that these people would be able to access adequate and nutritious food that is affordable and culturally acceptable, and maintain or achieve the highest attainable standard of health and well-being.	impact would need further analysis of baseline information and potential impacts caused by the Don Sahong Hydropower Project to create a clearer understanding of this impact.
Many of the people living in the Mekong region obtain supplementary income from fisheries as well as rice paddies and vegetable gardens that are fertilized by the Mekong River. The Don Sahong will threaten the population's subsistence and income security that is generated by fisheries and small-scale farming.	The Technical Review Report highlighted that there was the potential to have a substantial impact on fisheries and livelihoods. However, this impact would need further analysis of baseline information and potential impacts caused by the Don Sahong Hydropower Project to create a clearer understanding of this impact.
The Don Sahong dam is located only two kilometres from the critically endangered Irrawaddy dolphins' core habitat. The likely extirpation (local extinction) caused by the Don Sahong will further harm the livelihoods of the communities whose critical supplementary income depends on dolphin tourism in Lao PDR and Cambodia.	The Technical Review Report identified that the Irrawaddy dolphin sub-population in the Mekong River, which is classified as critically endangered, is vulnerable to the impacts of the Don Sahong Hydropower Project and that the project may lead to extinction of the local population. However, due to the paucity of information and restricted time to undertake the technical review the real impact could not be verified.
Deprivation of livelihood sources and threatening the communities ability to generate income are likely to destabilise the economy of the region and may exacerbate poverty of many who are already in or close to poverty.	The Technical Review Report found that the potential impact on the fisheries in the area is likely to impact on the livelihoods of the local communities. However, the development may also contribute to improved infrastructure in the area, provide jobs and improve Wash for the communities displace or immediate affected by the development.
11 households in Lao PDR who reside in the vicinity of the construction site are planned to be relocated to enable the construction of the Don Sahong dam, but many more Mekong residents would be forced to move due to the loss of access to livelihood sources. Limited data indicates that residents of 15 villages in Cambodia (1371 households) expressed their concern about possible resettlement due to the reduced access to food and income. None of the communities were officially given adequate information about the project and its impact on their homes or provided with other alternatives for possible resettlements.	The MRC is not privy to this information.

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Issue	MRC's response to the issue raised
<i>Rights of indigenous peoples</i> The Don Sahong project affects indigenous peoples and ethnic minorities such as the Kuy people that are closely connected to the natural resources including the Mekong river. The project threatens their rights to health, nutrition, lives and livelihoods, posing a threat to indigenous cultures and associated cultural rights. Lao PDR has not provided information to indigenous peoples and made no attempt to obtain their free, prior and informed consent.	This issue was not mentioned in the Technical Review Report. The MRC is not aware of the detail with regards to Lao PDRs disclosure of information to the Indigenous peoples referenced here.
<i>Duty to protect from harm by private companies</i> The Government of Lao PDR has not fulfilled its obligation to ensure that business operating in the country namely Mega First, respect human rights in the implementation of the Don Sahong project. In March 2006, Lao PDR granted Mega First Corporation Berhad, exclusive rights to the feasibility of the Don Sahong Dam and in 2008 signed a project development with Mega First. It is unclear whether the Government requested or verified that appropriate human rights due diligence processes were conducted, including assessing the human rights impacts of the dam.	The MRC is not privy to this information and whether the Lao Government undertook a due diligence check of Mega First.
Appears to be a serious problem in the realisation of procedural rights, such as their rights to information and participation, making it possible to identify the social, economic, human rights and environmental impacts of the project. Deeply concerned that the affected populations rights to food, health and housing, as well as their cultural rights, would be significantly impacted. It also appears that there is a lack of international/regional cooperation which should be put in place as a means to protect all affected population from human rights violations that are arising from transboundary harm.	The MRC has responsibility for the Prior Consultation process only and procedures were followed for sharing of information and participation. The Prior Consultation process is an attempt to facilitate regional cooperation in the context of water use on the mainstream of the Lower Mekong. The MRC would welcome the OHCHR guidance on how to ensure the Prior Consultation process through its information/participation process reaches the affected people and enabled them to identify the social, economic, human rights and environmental impacts of the project.