

The 5th Regional Stakeholder Forum

First Regional Information Sharing on Pak Lay Prior Consultation Process

20-21 September 2018

Landmark Hotel, Vientiane, Lao PDR

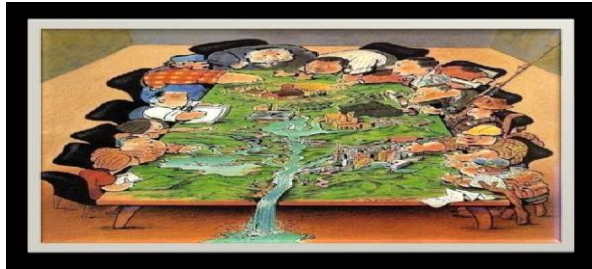


Implementation of Previous PNPCA Processes and Lessons Learnt



Prior consultation processes to date

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



No agreement reached by both JC and Council

➤ *Conduct Council Study*

Xayaburi
22 Oct. 2010
6-Months
Prior Consultation
Process

No agreement reached by both JC and Council

➤ *Matter was referred to Governments for solution*

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

Agreement reached by JC with a Statement

➤ *Joint Action Plan to implement the Statement*

- ✓ Enhanced PNPCA Implementation
- ✓ Institutionalized Statement & JAP
- ✓ Enhanced stakeholder engagement

Pak Beng
20 Dec. 2016
6-Months
Prior Consultation
Process

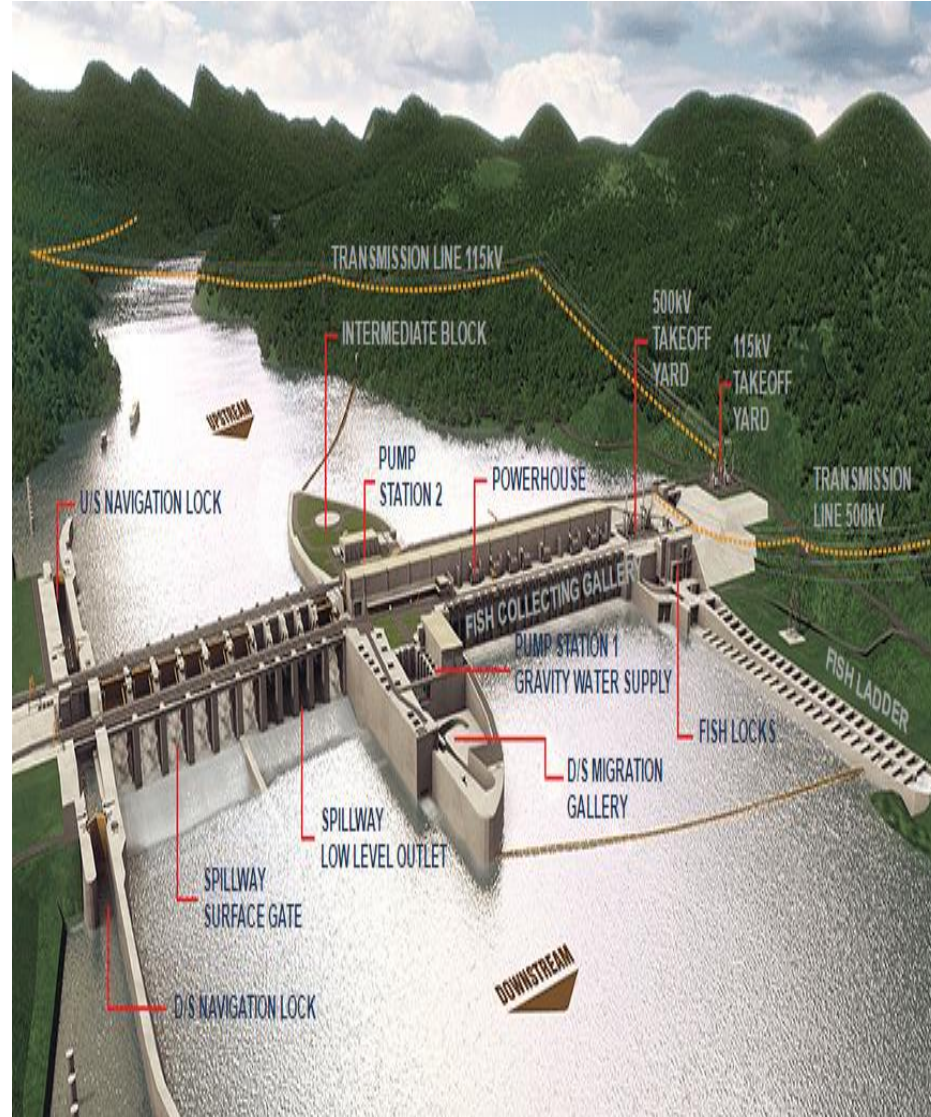
Next
PNPCA?



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:

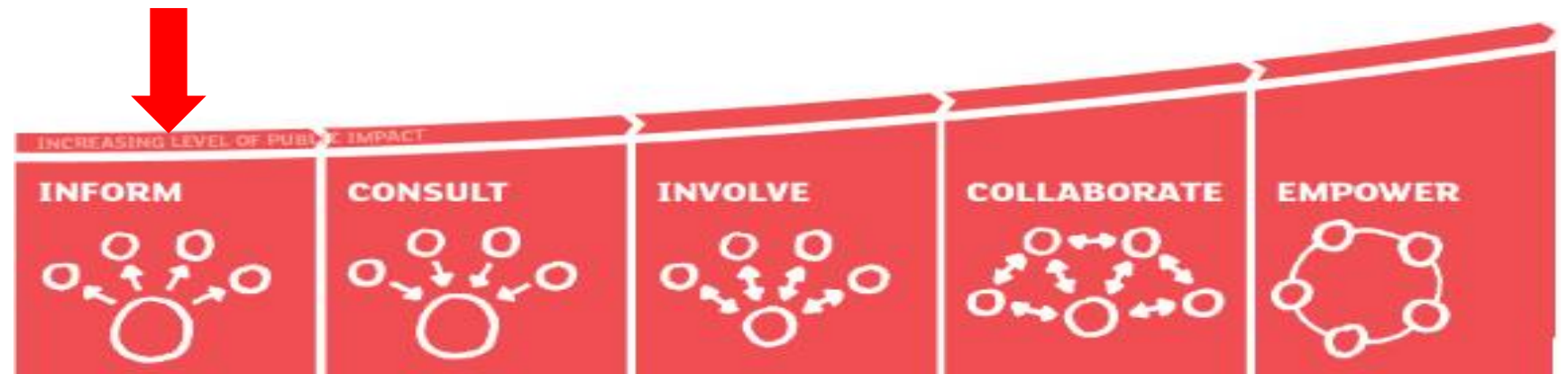
- Post PC process lead to improvements to design (additional investment), but it **went unnoticed and without ongoing engagement.**
- Now **in discussions to assess what changes** were made to the design and operating rules.



Lessons learnt from Xayaburi (Cont.)

4. Stakeholders involvement was minimal:

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



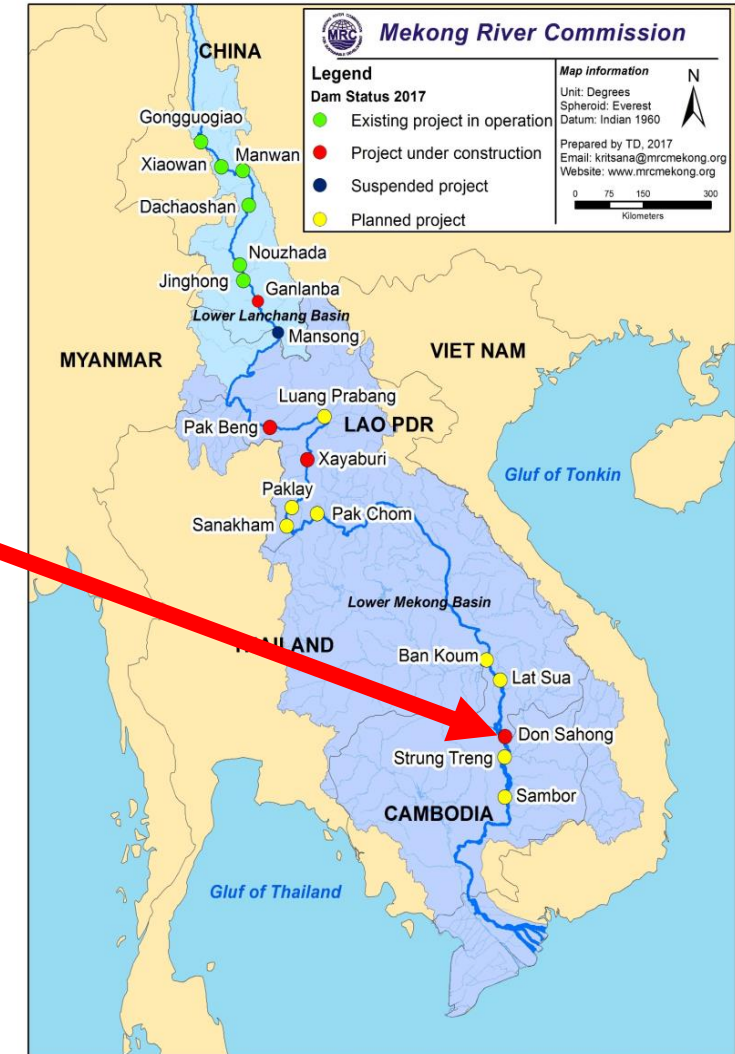
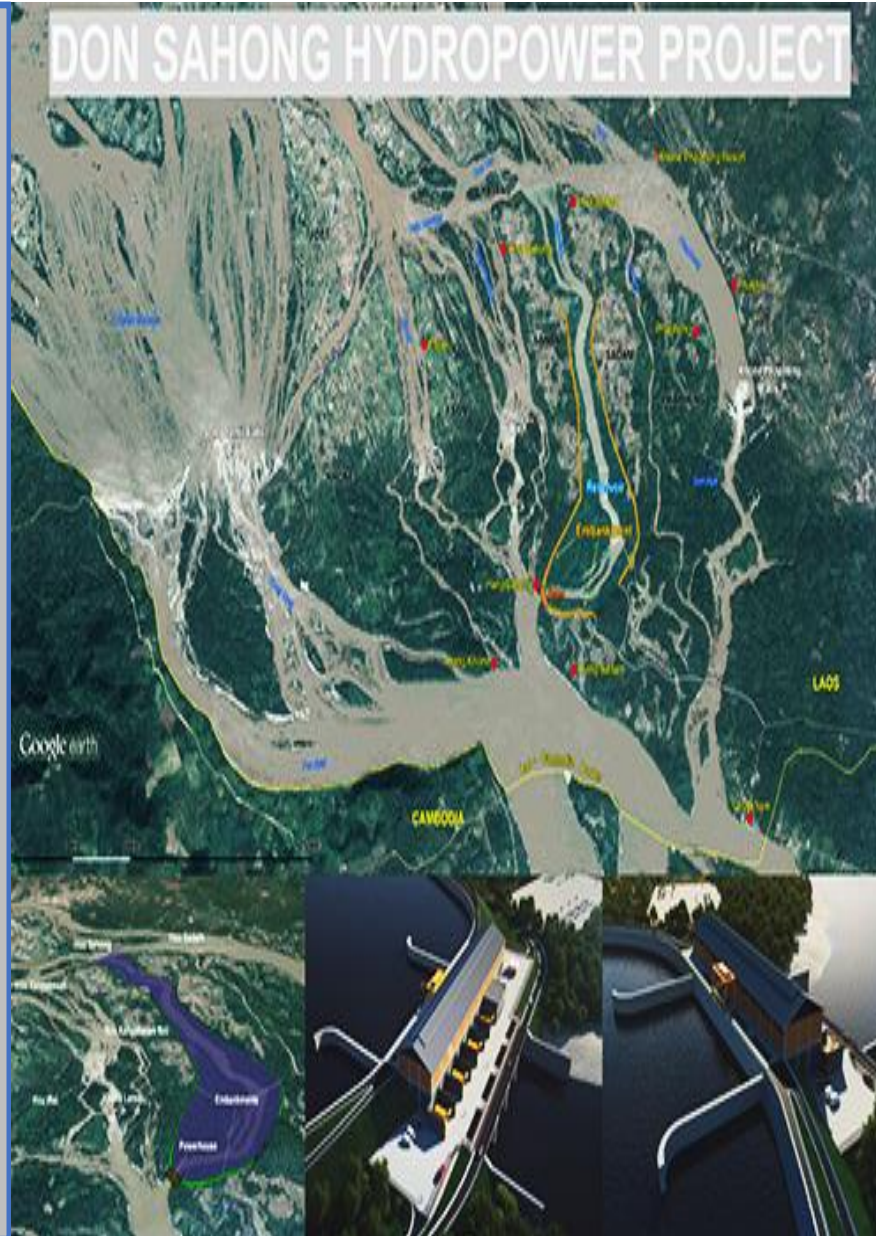
Based on the IAP2 Spectrum -
<https://www.iap2.org/>

**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?

- When there is just a possibility of a significant impact on the mainstream.
- 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:

- **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.



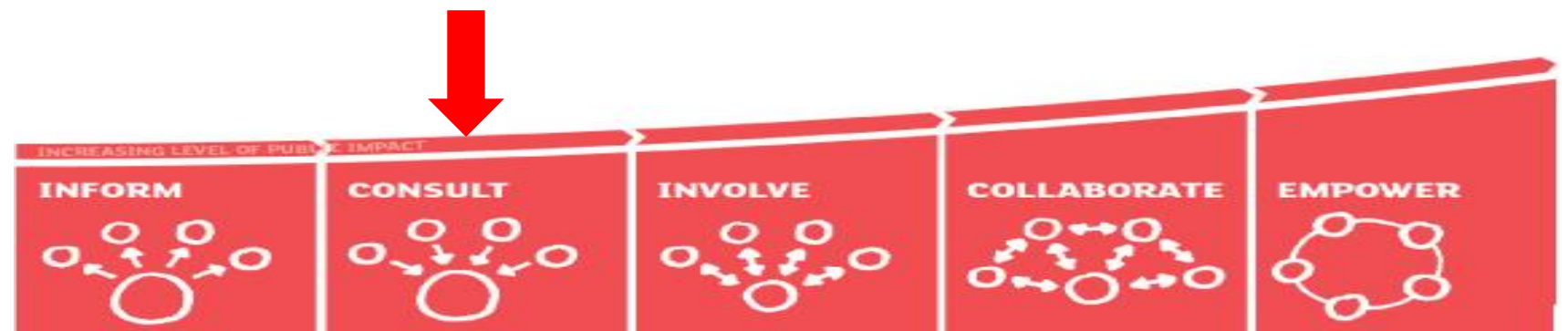
Lessons learnt from Don Sahong (Cont.)

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.



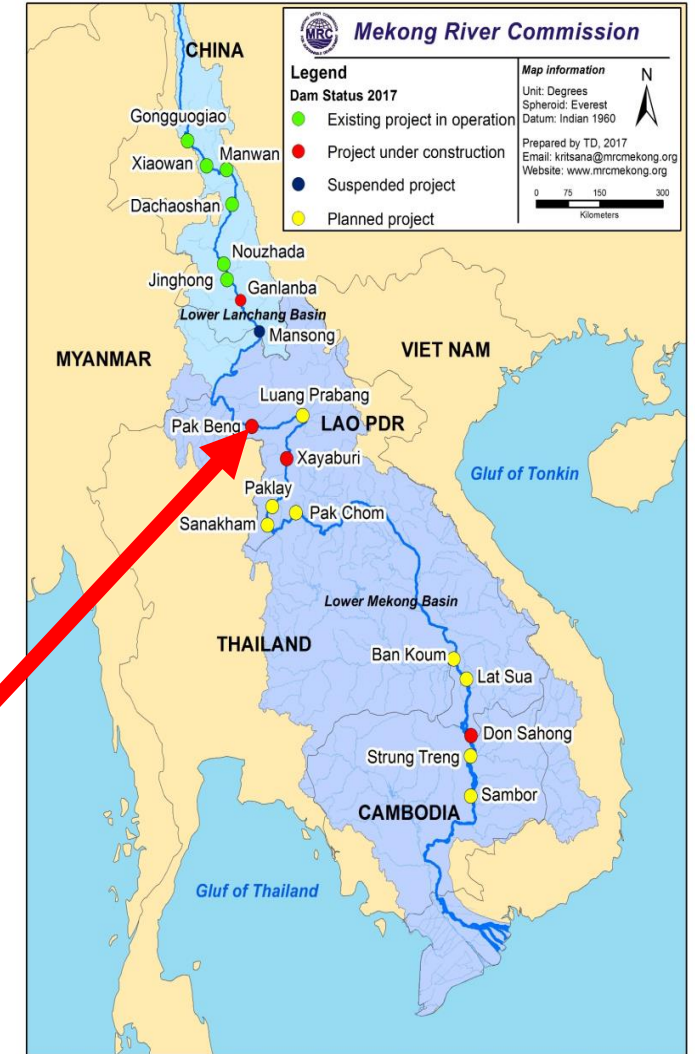
Based on the IAP2 Spectrum -
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**NO CLEAR OUTCOME OR AGREED WAY
FORWARD**

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 201**
 - ❖ **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

