

Her Excellency, Madam Bu Jianguo
Ambassador of the People's Republic of China to the Kingdom of Cambodia
No.156, Mao Tse Toung Blvd.,
Phnom Penh, Cambodia (P.O. Box 26)

26 May 2014

Dear Excellency, Ambassador Bu Jianguo,

**Urgent request to reconsider China's investment
in the Lower Sesan 2 Dam, Stung Treng Province, Cambodia**

We are a group of civil society organizations working on environmental and social issues in the Mekong region. We reference the 'Joint Statement of the communities along Sesan, Srepok and Sekong Rivers (3S Rivers)', delivered to Your Excellency on 12 December 2013. Local communities along the 3S Rivers affected by the Lower Sesan 2 Hydropower Dam, many of them indigenous groups, are extremely concerned about the impacts of this project on their lives and livelihoods and have sought our assistance. The communities believe that the project must be immediately halted due to the enormous harm it poses to the environment and communities of the 3S Rivers and the Mekong River Basin in Cambodia, as well as neighboring countries.

We write to urge Your Excellency to ensure that the Chinese companies investing in this project, including Hydrolancang International Energy Co. Ltd and its parent company, Huaneng Group, comply with legal and corporate social responsibilities with respect to the Lower Sesan 2 Dam. This letter serves to highlight the responsibilities of Hydrolancang and Huaneng under national and international laws. We note that the Chinese companies investing in this project have already been found by the Chinese government to have poor legal compliance in relation to dam projects in China and are associated with projects with poorly implemented resettlement and compensation procedures.¹ We are concerned that these companies, which are Chinese State Owned Enterprises (SOEs), are repeating the same poor practices in Cambodia.

To date, there has been limited assessment of the environmental and social impacts of the project, and no assessment of transboundary impacts. Information disclosure and transparency with respect to the Lower Sesan 2 Dam has been vastly inadequate: little to no information has been provided to communities affected by the project and no attempts have been made to properly consult with or engage affected stakeholders in decision-making.

¹ Ministry of Environmental Protection of the People's Republic of China, "MEP Suspended Approvals of EIA for Hydropower Development Projects of China Huaneng Group and China Huadian Corporation to Control Illegal Construction Projects and Energy-intensive and High-polluting Overlapping Construction Projects", 11 June 2009, available at:

http://english.mep.gov.cn/News_service/news_release/200907/t20090723_156677.htm; 水电移民返贫谁之过?

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http://www.cenews.com.cn/xwzx/sj/200910/t20091028_624016.html; Worrell, S, 'Dam firm violated law', *Phnom Penh Post*, 5 June 2013, at: www.phnompenhpost.com/national/dam-firm-violated-law.

The Lower Sesan 2 Dam is very controversial in the region and internationally because of its transboundary impacts. We fear that it could threaten regional stability and harm the image of Chinese investment. Recent scientific analysis predicts that the environmental and social impacts of the Lower Sesan 2 Dam will be extensive and severe, causing serious damage to areas and communities in Cambodia as well as neighboring countries of Laos, Thailand and Vietnam.

As a representative and advisor to the Chinese government on its relations with the Cambodian government, we urge you to ensure that relevant stakeholders within the Chinese government are properly briefed on the concerns regarding Huaneng's role in developing the Lower Sesan 2 Dam and the consequences to the environment and communities. Detailed findings and recommendations in this regard are included below.

Inadequate Assessment of Impacts

Scientific studies warn that impacts of the Lower Sesan 2 Dam will be far more extensive than addressed in the Environmental Impact Assessment (EIA) report and environmental management plan.² The hydrology, fish migration and ecosystems of the Sesan, Srepok and Sekong Rivers system are inextricably linked to those of the Mekong River and the Tonle Sap Lake. Studies predict that the Lower Sesan 2 Dam will lead to a 9.3% reduction in fish biomass across the entire Mekong Basin, approximately 200,000 tons of fish per year.³ This equates to between US\$200 million – US\$360 million a year at first sale, an amount far greater than the annual revenue to be generated by the Lower Sesan 2 Dam.⁴ The dam will contribute to significant changes in hydrological flows in the Mekong River and reduce sediment by approximately 6-8 percent,⁵ reducing soil fertility and agricultural production in the Mekong floodplains and Mekong Delta.

Fish are essential to livelihoods of Cambodian people and are a primary food source for communities along the Sesan and Mekong Rivers and the Tonle Sap.⁶ Such a sharp reduction in fish will cause major food and health security issues and increase poverty and malnutrition. The loss of food, protein and vital nutrients, the destruction of fertile soil, agricultural land, ecosystems and biodiversity will affect communities across Cambodia, the Vietnam Delta, and upstream along the Mekong in Laos and Thailand, and may threaten food security across the region.

² Ziv, G.; Baran, E.; Nam, S.; Rodríguez-Iturbe, I.; & Levin-Simon A., (2012) 'Trading-off fish biodiversity, food security, and hydropower in the Mekong River Basin' Proceedings of the National Academy of Sciences of the United States of America, 28 January 2012; Baird, I., (2009), 'Best Practices in Compensation and Resettlement for Large Dams: The case of the Lower Sesan 2 Hydropower Project in Northeastern Cambodia', The Rivers Coalition of Cambodia, Phnom Penh

³ Ziv et al (2012), supra note 2.

⁴ The above figures are calculated using \$1 - \$1.80 per kg first sale value, as utilized in the Strategic Environmental Assessment report commissioned by the Mekong River Commission: International Centre For Environmental Management (ICEM), Strategic Environmental Assessment of Hydropower on the Mekong Mainstream at 8 (2010), <http://www.mrcmekong.org/assets/Publications/Consultations/SEA-Hydropower/SEA-Main-Final-Report.pdf>.

⁵ Ketelson, T., International Center for Environmental Management, cited in Vrieze, P, & Chhorn C., "The Battle for the 3S Rivers." *The Cambodia Daily*, 10 September 2011.

⁶ Fish are the primary form of protein in the diet of 75% of rural Cambodians: FAO. *National Fishery Sector Overview: Cambodia*. Food and Agriculture Organization of the United Nations, Mar. 2011; p.8.

As the existing EIA report only examined impacts in an area around the dam site, it appears to fall below the standards set by Chinese environmental law,⁷ and fails to comply with requirements under Cambodian law to study the possible impacts of the project, in particular those "deemed serious to natural resources, ecosystems, health and public welfare."⁸ We are not aware of any updated EIA study undertaken by Hydrolancang to ensure compliance with these requirements.

Transboundary Impact Assessment Required

Despite the predicted transboundary impacts of the Lower Sesan 2 Dam, there is no indication that a transboundary EIA has been conducted or information on impacts disclosed to governments in neighboring countries. Conducting such an assessment would help ensure transparent management of social and environmental risks. Further, customary international law and international best practice require that potential transboundary impacts be assessed and disclosed.⁹ The International Court of Justice has stated that there is: "a requirement under general international law to undertake an Environmental Impact Assessment where there is a risk that the proposed industrial activity may have a significant adverse impact in a transboundary context, in particular, on a shared resource."¹⁰ There are international agreements providing guidance on best practice for transboundary EIAs. For example, the 'Espoo Convention' mandates assessment of transboundary impacts prior to approval of a project and includes requirements of public participation and notification to those affected across borders.¹¹

Information Disclosure and Transparency

The project developer, Hydropower Lower Sesan 2 Co. Ltd, has provided little information to communities in the project site about the impacts of the project and resettlement plan. Furthermore, they have not disclosed any information or conducted consultations regarding project impacts with other communities to be affected in Cambodia and neighboring countries. Indeed, because of the limitations of the existing EIA report, it has not been possible to disclose complete information about project impacts or consult with affected communities.

Cambodian laws,¹² as well as the standards established in Chinese law¹³ and international best practice,¹⁴ each include obligations to prepare and disclose impact assessments, conduct public hearings, include affected communities and stakeholders in the assessment process and provide

⁷ *Law on Environmental Impact Assessment* (promulgated by the Standing Committee of the National People's Congress., Oct. 28, 2002, effective Sept. 1, 2003) (P.R.C.), see Articles 4, 7, 10.

⁸ Royal Government of Cambodia, *Subdecree on Environmental Impact Assessment Process*, No: 72. ANRK.BK, Phnom Penh, August 11, 1999, Article 8.

⁹ United Nations Conference on Environment and Development: Rio Declaration on Environment and Development, 14 June 1992, 31 I.L.M. 874, Article 19.

¹⁰ *Pulp Mills on the River Uruguay*, (Argentina v. Uruguay), Provisional Measures, Order of 13 July 2006, I.C.J. Reports 2006, p. 113 ICJ (2010), para. 204.

¹¹ See Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) (25 Feb. 1991), Articles 2(2), 2(3), 2(6).

¹² Royal Government of Cambodia, *Environmental Protection and Natural Resource Management Law* (1996), Preah Reach Kram/NS-RKM-1296/36; *Ibid*, see Article 1.

¹³ *Law on Environmental Impact Assessment* (promulgated by the Standing Committee of the National People's Congress., Oct. 28, 2002, effective Sept. 1, 2003) (P.R.C.) at Article 5; *Provisional Measures on Public Participation in Environmental Impact Assessment* (promulgated by SEPA, Feb. 14, 2006, effective Mar. 18, 2006).

¹⁴ See, for example, United Nations, *Rio Declaration on Environment and Development* 1992, UN Doc. A/CONF.151/26 (vol. I); 31 ILM 874 (1992), Principle 10; United Nations Economic Commission for Europe, *Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters* 1998 (Aarhus Convention), United Nations, *Treaty Series*, vol. 2161, p. 447.

opportunities for public comment and input. Further, the United Nations *Declaration on the Rights of Indigenous Peoples*,¹⁵ which both China and Cambodia have endorsed, prohibits the removal of indigenous peoples from their lands without their free, prior and informed consent and only after agreement on just and fair compensation.¹⁶

We appreciate that the Chinese government and companies concerned want to help Cambodia increase energy production to meet the country's development needs. However, the failure to engage with communities and civil society and enable them to voice their concerns is likely to make the companies the focus of efforts to oppose the project. Such opposition may threaten the project's sustainability and damage the image of Chinese investment, affecting future investment opportunities.

Corporate responsibilities of Chinese Companies

The Chinese government has issued the *Guidelines for Environmental Protection in Foreign Investment and Cooperation* (Environmental Guidelines),¹⁷ which apply to SOEs. The Environmental Guidelines state that the planning and consultation process for investment projects should promote the harmonious development of the local economy, environment and community and pay respect to the religious beliefs and cultural traditions of the local people. The Guidelines require project developers to consider the social impacts of the project and make efforts to protect cultural heritage and reduce other adverse impacts.¹⁸ The significant threats posed by the Lower Sesan 2 Dam to people's livelihoods, traditions and well-being, and the lack of consultation with affected communities, indicate that the project is not in compliance with the Environmental Guidelines and will not support the sustainable development that the Guidelines aim to promote.¹⁹

The *United Nations Guiding Principles on Business and Human Rights*²⁰ (Guiding Principles) have been endorsed by the UN Human Rights Council, of which China is a member. Under the Guiding Principles, Chinese companies are obliged to respect human rights and to prevent and mitigate all adverse human rights impacts linked to their operations, including on food security, well-being and livelihoods.²¹ The Chinese government is responsible for ensuring that SOEs such as Huaneng and Hydrolancang comply with the Guiding Principles and conduct human rights due diligence.²²

Requests to the Chinese Government

The Lower Sesan 2 Dam will have severe social and environmental impacts and is likely to undermine China's efforts to contribute to economic growth, environmental protection and sustainable development through its investments. We call on the Chinese government to:

¹⁵ United Nations *Declaration on the Rights of Indigenous Peoples*: A/RES/61/295, adopted by the General Assembly 2 October 2007.

¹⁶ *Ibid*, Article 10.

¹⁷ *Guidelines for Environmental Protection in Foreign Investment and Cooperation*, issued by Ministry of Commerce of the People's Republic of China and Ministry of Environmental Protection of the People's Republic of China, Shang He Han [2013] No. 74, Date of Issuance: February 18, 2013.

¹⁸ Articles 3, 9.

¹⁹ Articles 4, 21.

²⁰ Office of the High Commissioner on Human Rights, *UN Guiding Principles on Business and Human Rights: Implementing the Protect, Respect, Remedy Framework* (2011), available at: www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.

²¹ Principle 11, 13, 15.

²² Principle 4.

- Intervene with Huaneng and Hydrolancang to immediately halt construction of the Lower Sesan 2 Dam and conduct comprehensive environmental impact assessment, including adequate assessment of transboundary impacts, in accordance with international standards.
- Ensure that Huaneng and Hydrolancang do not proceed with this project without comprehensive disclosure of project information, participation in decision-making and consent of affected communities, in accordance with national and international standards.
- Ensure Chinese companies investing overseas comply with obligations under international law and national policies of the People's Republic of China, including the *Guidelines for Environmental Protection in Foreign Investment and Cooperation* and the *UN Guiding Principles on Business and Human Rights*. This includes the implementation of environmental and social risk management systems into business operations and due diligence to ensure that human rights impacts are identified and mitigated.

Research indicates that alternative means of power generation exist that are sustainable and have less harmful environmental and social impacts. Encouraging Chinese companies to invest in these alternatives would strengthen the leadership of China in the region and benefit economic growth while meeting the needs of the Cambodian people.

Sincerely,

3S Rivers Protection Network (3SPN)
 Centre for Social Research and Development Vietnam (CSRVD)
 Community Economic Development Cambodia (CED)
 Community Resources Centre of Thailand (CRC)
 EarthRights International (ERI)
 Fisheries Action Coalition Team of Cambodia (FACT)
 International Rivers
 Laofang Bunditdedsakul, Lawyer (Thailand)
 Mekong Watch
 My Village Cambodia (MVi)
 NGO Forum on Cambodia (NGOF)
 Northeastern Rural Development, Cambodia (NRD)
 Samreth Law Group, Cambodia
 Towards Ecological Recovery and Regional Alliance (TERRA)
 Vietnam Rivers Network

Copies to:

His Excellency, Mr. Yang Jing 杨晶
Secretariat of General Office of the State Council of the People's Republic of China
中华人民共和国国务院办公厅秘书长

His Excellency, Mr. Wang Yi 王毅
Minister of Foreign Affairs of the People's Republic of China 中华人民共和国外交部部长

His Excellency, Mr. Gao Hucheng 高虎城
Minister of Commerce of the People's Republic of China 中华人民共和国商务部部长

His Excellency, Mr. Zhou Shengxian 周生贤
Minister of Environmental Protection of the People's Republic of China

Mr. Cao Peixi 曹培玺
President, China Huaneng Group

Mr. Wang Yongxiang 王永祥
Chairman, Huaneng Lancang River Hydropower Co. Ltd.,

Neak Oknha Kith Meng
Chairman
Hydropower Lower Sesan 2 Co. Ltd

Neak Oknha Kith Meng
Chairman and Chief Executive Officer
The Royal Group, Cambodia

Mr. Pham Le Thanh- General Director
Ông Phạm Lê Thanh - Tổng Giám
Vietnam Electricity (EVN)

Contacts:

3S Rivers Protection Network (3SPN)
Mr. Meach Mean, Coordinator
Email: info@3spn.org Tel. +855 75 974 112

Centre for Social Research and Development Vietnam (CSR-D)
Ms. Lam Thi Thu Suu, Director
Email: csr.d.hue@gmail.com Tel. +84 543 83 77 14

Community Economic Development Cambodia (CED)
Mr. Yous Pheary, Executive Director
Email: ypheary@ced-krt.org

Community Resources Centre of Thailand
Ms. Sor Rattanamanee Polkla, Coordinator and Lawyer
Email: sorrattana1@gmail.com Tel. +66 817 72 58 34

EarthRights International
Mr. Daniel King, Mekong Legal Director,
Email: daniel@earthrights.org Tel. +66 854 306 011

Fisheries Action Coalition Team of Cambodia (FACT)
Mr. Om Savath, Executive Director
Email: savath@fact.org.kh Tel. +85 523 99 20 44

International Rivers
Ms. Ame Trandem, Southeast Asia Program Director
Email: ame@internationalrivers.org Tel. +66 868 82 24 26

Mr. Laofang Bundidterdsakul
Lawyer, Thailand
Email: phaajxyaaj@yahoo.co.th Tel. +66 890 715 096

Mekong Watch
Mr. Toshiyuki Doi, Director
Email: toshi-doi@mtd.biglobe.ne.jp

My Village Cambodia (MVi)
Mr. Kham Syngoun, Executive Director
Email: myvillage@mvicambodia.org, Tel: +855 12 985796

NGO Forum on Cambodia (NGOF)
Mr. Tek Vannara, Executive Director,
Email: vannara@ngoforum.org.kh, Tel: +855 23 21 44 29

Northeastern Rural Development, Cambodia (NRD)
Mr Sam Sovann, Executive Director,
Email: sovanns@nrdo.org, Tel: +855 977775788

Samreth Law Group, Cambodia
Ms. Ith Mathoura, Managing Lawyer
Email: thoura@samrethlawgroup.com Tel. +855 12 50 56 86

Towards Ecological Recovery and Regional Alliance (TERRA)
Ms. Premrudee Daorong, Director
Email: fer@terraper.org

Vietnam Rivers Network
Ms. Lam Thi Thu Suu, Coordinator,
Email: csrd.hue@gmail.com Tel. +84 543 83 77 14