

Neak Oknha Kith Meng
Chairman
Hydropower Lower Sesan 2 Co. Ltd,
No.246, Preah Monivong Blvd,
Sangkat Boeung Raing, Khan Daun Penh,
Phnom Penh, Cambodia

26 May 2014

Dear Neak Oknha Kith Meng,

Hydropower Lower Sesan 2 Co. Ltd's Responsibilities to Protect the Environment and Respect Human Rights in the Lower Sesan 2 Dam in Stung Treng Province

We are a group of civil society organizations working on environmental and social issues in the Mekong region. We understand that Hydropower Lower Sesan 2 Co. Ltd, a joint venture of Hydrolancang International Energy Co Ltd and the Royal Group, is developing the Lower Sesan 2 Dam in Stung Treng Province, and that construction activities are already underway. Local communities along the Sesan, Srepok and Sekong Rivers (3S Rivers) affected by the proposed 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 enclose a joint statement by affected communities, totaling more than 75,000 people.

We write to request that Hydropower Lower Sesan 2 Co. comply with legal and corporate social responsibilities with respect to the Lower Sesan 2 Hydropower Dam project. This letter serves to highlight the responsibilities of Hydropower Lower Sesan 2 Co. under national and international laws. 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 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.

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 project developer of the Lower Sesan 2 Dam, we urge you to give full consideration to the concerns surrounding this project and the consequences to the environment and communities. Our 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.¹ 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.² 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.³ The dam will contribute to significant changes in hydrological flows in the Mekong River and reduce sediment by approximately 6-8 percent,⁴ 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.⁵ 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.

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,⁶ 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."⁷ We are not aware of any updated EIA study undertaken by Hydropower Lower Sesan 2 Co. 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

¹ 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

² Ziv et al (2012), supra note 1.

³ 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>.

⁴ 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.

⁵ 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.

⁶ *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.

⁷ Royal Government of Cambodia, *Subdecree on Environmental Impact Assessment Process*, No: 72. ANRK.BK, Phnom Penh, August 11, 1999, Article 8.

practice require that potential transboundary impacts be assessed and disclosed.⁸ 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.”⁹ 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.¹⁰

Information Disclosure and Transparency

Hydropower Lower Sesan 2 Co. 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,¹¹ as well as the standards established in Chinese law¹² and international best practice,¹³ each include obligations to prepare and disclose impact assessments, conduct public hearings, include affected communities and stakeholders in the assessment process and provide opportunities for public comment and input. Further, the United Nations *Declaration on the Rights of Indigenous Peoples*,¹⁴ 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.¹⁵

We appreciate that the governments 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 Hydropower Lower Sesan 2 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.

⁸ United Nations Conference on Environment and Development: Rio Declaration on Environment and Development, 14 June 1992, 31 I.L.M. 874, Article 19.

⁹ *Pulp Mills on the River Uruguay*, (Argentina v. Uruguay), Provisional Measures, Order of 13 July 2006, I.C.J. Reports 2006, p. 113ICJ (2010), para. 204.

¹⁰ See Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) (25 Feb. 1991), Articles 2(2), 2(3), 2(6).

¹¹ Royal Government of Cambodia, *Environmental Protection and Natural Resource Management Law* (1996), Preah Reach Kram/NS-RKM-1296/36; *Ibid*, see Article 1.

¹² *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).

¹³ 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.

¹⁴ United Nations *Declaration on the Rights of Indigenous Peoples: A/RES/61/295*, adopted by the General Assembly 2 October 2007.

¹⁵ *Ibid*, Article 10.

Corporate responsibilities of Hydropower Lower Sesan 2 Co.

The Chinese government has issued the *Guidelines for Environmental Protection in Foreign Investment and Cooperation* (Environmental Guidelines),¹⁶ which apply to SOEs, such as Hydrolancang, Hydropower Lower Sesan 2's parent company. 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.¹⁷ 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.¹⁸

The *United Nations Guiding Principles on Business and Human Rights*¹⁹ (Guiding Principles) have been endorsed by the UN Human Rights Council, of which China is a member. The Guiding Principles reference the *International Covenant on Civil and Political Rights*²⁰ and *International Covenant on Economic, Social and Cultural Rights*.²¹ Cambodia is party to both these instruments. Under the Guiding Principles, 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.²² This responsibility cannot be avoided by relying on assurances of the Cambodian government;²³ companies must independently undertake human rights due diligence in relation to all of the human rights impacts of their projects, including those in neighbouring countries.

Requests to Hydropower Lower Sesan 2 Co.

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. Involvement in this project may seriously damage the reputations of the companies concerned and jeopardize the livelihoods and well-being of hundreds of thousands of people in Cambodia and the region. We therefore request that Hydropower Lower Sesan 2 Co.:

- 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.

¹⁶*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.

¹⁷ Articles 3, 9.

¹⁸ Articles 4, 21.

¹⁹ 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.

²⁰ UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171.

²¹ UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3.

²² Principle 11, 13, 15.

²³ Principle 14.

- Ensure that the project does not proceed without comprehensive disclosure of project information, participation in decision-making and consent of affected communities, in accordance with national and international standards.
- 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.

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 Bunditdertsakul, 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

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