



## **Annex 4: Have Cambodia’s and Vietnam’s concerns with the Xayaburi Dam been addressed?**

In April 2011, the Mekong River Commission (MRC) governments of Cambodia, Laos, Thailand, and Vietnam met to discuss the Xayaburi Hydropower Project, the first of eleven proposed dams to undergo the MRC’s prior consultation process. At the meeting, Cambodia and Vietnam requested more information about the project in order to inform further discussions. They also highlighted a number of technical concerns that they felt should be addressed before further project implementation. Under the 1995 Mekong Agreement procedures and international law, Laos is obligated to meet these requests for more information.<sup>1</sup>

Nevertheless, Laos put forward its position that the prior consultation was closed. The MRC governments announced after the meeting that a decision on whether to proceed with the project was deferred to the Ministerial level.<sup>2</sup> The four governments have not yet agreed to close the prior consultation process or made a final decision on the project.

After the April 2011 meeting, Laos hired the Pöyry Group to assess whether the project complies with MRC’s environmental standards. Following criticisms of the Pöyry report, Laos hired Compagnie Nationale du Rhône (CNR) in January 2012 to conduct further study. It is important to note that the Lao government hired these consultants on a unilateral basis, and the Pöyry and CNR reports have not been endorsed by other MRC governments. In July 2012, Laos invited a delegation of governments to visit the project site and insisted that it is committed to addressing the concerns of neighboring countries. Less than two months later, however, the Lao government announced that construction on the project continues on schedule.<sup>3</sup>

Have Laos and Thailand really addressed the concerns of their neighbors? This annex compares the MRC governments’ requests for more information with the actions taken by Laos and Thailand.

---

<sup>1</sup> MRC (2005), Procedures for Notification, Prior Consultation, and Agreement, para. 5.4.2; 1995 Mekong agreement, art. 7; International Court of Justice, *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, at 60-61, para. 204 (20 April 2010), available at <http://www.icj-cij.org/docket/files/135/15877.pdf>.

<sup>2</sup> MRC, “Lower Mekong countries take prior consultation on Xayaburi project to ministerial level,” 19 April 2011, <http://www.mrcmekong.org/news-and-events/news/lower-mekong-countries-take-prior-consultation-on-xayaburi-project-to-ministerial-level>.

<sup>3</sup> Lao PDR government, “Laos clarifies Xayaboury dam development,” *Vientiane Times*, 6 September 2012.

CAMBODIA'S AND VIETNAM'S REQUESTS (April 2011)	LAOS' RESPONSE (as of September 2012)	THAILAND'S RESPONSE (as of September 2012)
<p><b>More studies are needed before further implementation of the Xayaburi project.</b> (Cambodia, Vietnam)</p>	<p><b>Not addressed.</b> Construction on the project has continued. Laos proposed to conduct some studies while construction is already underway, but has not addressed the impacts that construction itself will cause nor has it assessed potential transboundary impacts.</p>	<p><b>Not addressed.</b> Thailand has continued to implement the project, signing agreements to finance the project and purchase its electricity. It has made no commitment to conduct more studies. A complaint was brought in Thai Administrative Court by potentially affected Thai villagers in August 2012, requesting further impact assessments and consultations consistent with the requirements of the Thai constitution.</p>
<p><b>Study the project's transboundary impacts.</b> (Cambodia, Vietnam)</p>	<p><b>Not addressed.</b> In July, Laos told a visiting delegation of foreign governments that it would not conduct a transboundary impact assessment. Laos stated that all transboundary impacts were already addressed through the reports of Pöyry and CNR, although both of these were desk studies rather than impact assessments. The full extent of the project's transboundary impacts remains unknown.</p>	<p><b>Not addressed.</b> Thailand has not addressed this issue, although Thai communities are likely to be impacted by the project. This issue is addressed in the pending Thai Administrative Court complaint.</p>
<p><b>Study the cumulative impacts of the eleven proposed Mekong mainstream dams.</b> (Cambodia, Vietnam)</p>	<p><b>Not addressed.</b> The four governments have agreed to conduct a joint impact study on hydropower development. Laos, however, has expressly stated that it does not plan to stop Xayaburi Dam construction while this study is underway.</p>	<p><b>Not addressed.</b> Thailand is participating with the other MRC governments in designing the joint study. However, the Thai government already approved a Power Purchase Agreement to buy 95% of the project's electricity as well as a loan by state-owned Krung Thai Bank, indicating its support for construction on the project to continue.</p>

<p><b>Develop measures to mitigate the transboundary and cumulative impacts, undertaken with participation of downstream countries.</b> (Cambodia)</p>	<p><b>Not addressed.</b> Laos' consultants Pöyry and CNR proposed mitigation measures, although they have done so without first studying the actual impacts that will need to be mitigated.</p>	<p><b>Has remained silent.</b></p>
<p><b>Implement the recommendations of the MRC's March 2011 technical review of the project.</b> (Cambodia, Vietnam)</p>	<p><b>Not addressed.</b> Laos' consultant Pöyry concluded that these recommendations could be addressed during the construction phase, although the MRC report explicitly stated that this was not possible.</p>	<p><b>Has remained silent.</b></p>
<p><b>Conduct further study of the dam's impacts on hydrology, fisheries, sediment, water quality, and dam safety.</b> (Cambodia, Vietnam)</p>	<p><b>Not addressed.</b> Laos' consultants Pöyry and CNR proposed mitigation measures without conducting a study of the dam's impacts.</p>	<p><b>Has remained silent.</b></p>
<p><b>More time is needed under the MRC prior consultation process to gather sufficient evidence to evaluate the project.</b> (Cambodia, Vietnam)</p>	<p><b>Not addressed.</b> Laos maintains its position that the MRC prior consultation process concluded automatically after six months.</p>	<p><b>Has remained silent.</b></p>
<p><b>Stakeholders need information in a more timely manner in order for effective consultations to take place.</b> (Cambodia)</p>	<p><b>Not addressed.</b> No further consultations have been carried out.</p>	<p><b>Not addressed.</b> Thailand has not organized further consultations, despite requests by affected Thai communities.</p>
<p><b>Develop a benefits sharing mechanism for affected downstream countries.</b> (Cambodia)</p>	<p><b>Not addressed.</b> No such mechanism has been developed for the Xayaburi project. The MRC secretariat has conducted preliminary research on this topic.</p>	<p><b>Has remained silent.</b></p>
<p><b>Defer all decisions on Mekong hydropower projects by ten years.</b> (Vietnam)</p>	<p><b>Not addressed.</b> Laos has already approved the environmental impact assessment for the Don Sahong Dam on the Mekong River. Early work is underway and construction is scheduled to begin in the next two years.</p>	<p><b>Has remained silent.</b></p>

