



09 December 2013

ATTN:

Mr. Daovong Phonekeo, Director General
Mr. Chansaveng Bounngong, Deputy Director General
Department of Energy Policy and Planning, Ministry of Energy and Mines
Vientiane, Lao PDR
Via E-mail: daovongph@yahoo.com, cbounngong@yahoo.com

Subject: Comments on the Proposed Revisions to the Policy on Sustainable Hydropower Development in Lao PDR

Dear Mr. Daovong Phonekeo and Mr. Chansaveng Bounngong,

International Rivers is grateful for the opportunity to provide input on the revisions to the Policy on Sustainable Hydropower Development in Lao PDR and respectfully submits the comments below with the understanding that written submissions will be duly taken into account and reflected in an updated version of the policy provisions. We emphasize that we are writing these comments with the full expectation that there will be a good faith commitment on the part of all stakeholders involved to implement the policy provisions and that this policy will be transitioned into legally binding legislation or a stand alone decree in a timely manner.

International Rivers is an international non-governmental organization working around the world to protect rivers, support the aspirations of the people who depend upon rivers for their livelihoods, and promote development alternatives that meet people's water and energy needs.

The following points outline our main concerns with the current formulation of the draft policy:

- Overall policy objectives, planning and coordination, feasibility stage and economic considerations (Sections 1-5, 8) should:
 - Base the definitions of sustainability (1.1) on the already agreed upon terminology of the Rio Principles, adopted in 1992 by Lao PDR and 177 other nations at the 1992 UN Conference on Environment and Development;
 - Recognize *negotiation* with project affected people as a key component of social sustainability (1.1);
 - Include consideration of *socio-economic commitments (1.1)* and a *commitment to ensure livelihood restoration (1.1, 4)*;
 - Include an initial assessment of water and energy needs that will allow the Government of Lao PDR to identify water users (1.1, 4.2) and prioritize the meeting of the basic needs of people to accessible and sufficient potable water resources;
 - Require that on a project-by-project basis, comprehensive energy options assessments be undertaken at the pre-feasibility stage. This should reflect a precautionary approach by providing and screening an inventory of energy and technology options for development, taking into account studies on current demand-side assessments, supply-

side needs and options, strategic impact assessments, river-basin wide and cumulative impacts and possible future scenarios resulting from climate change;

- The above will also allow for realistic economic considerations to be taken into account (Section 5), and can support the updating of the Power Development Plan based on an inclusive range of considerations, allowing for greater savings and economic viability over the long run;
 - Specify lines of responsibility and roles for ensuring financial *transparency*;
 - Require initial assessment and payment of compensation to project affected people prior to commercial operation date, with further reparations to be paid based on assessments of losses/impacts associated with the project over the course of the project cycle
 - Require a plan for the foreseeable ending of the Concession Agreement, and the decommissioning of the project;
 - Refer to *resettlement* of displaced people, as opposed to using terminology of *relocation*.
 - Include a definition of project-affected people that encompasses those living within the project area of influence (those who have been displaced by the dam reservoir, people living upstream, downstream and in catchment areas, as well as those affected by associated facilities, such as canals and transmission lines) whose *assets, properties, livelihoods, cultures, and non-material resources* are affected. Reparations for all of the above impacts should be accounted for during assessments of compensation over the course of the project cycle (1, 8).
- The sections on environmental impacts, watershed conservation and management (Sections 7 and 11) should:
 - Mandate the assessment and definition of an environmental flows requirement at the feasibility stage for each project;
 - Include considerations for monitoring the quality and conditions of groundwater supplies and surface water in the project area of influence, and ensure results of such studies are made public;
 - Require regular monitoring of populations of fish and other aquatic species, and ensure results of such studies are made public;
 - Require modelling predictions of greenhouse gas emissions as a component of feasibility studies and measurements to be made on a regular basis, with results of such studies made public.
 - All policy references to consultation (primarily Section 9) should:
 - Clearly delineate responsibilities, identify time frames from pre-feasibility, prior to Concession Agreement, and throughout project cycle stages, and the inclusion of people within the project area of influence, as well as other stakeholders, including transboundary stakeholders on shared rivers.
 - Section 10 on Disclosure should:
 - Clarify responsibility, as well as process and means for disclosure of the studies and plans as outlined in each respective section of the policy.
 - Section 12 on Compliance Monitoring should:
 - Clearly identify independent third party monitoring as a requirement of each project to ensure review of the planning, design, implementation and compliance of social and environmental mitigation plans throughout the project cycle;

- Specify that a relevant, functioning grievance mechanism is required for each project, accessible to project affected people at an early stage of the project cycle without consequences of retribution (prior to - or immediately following – signing of Concession Agreement).
- Identify benefit-sharing mechanisms (Section 13) with greater specificity to ensure:
 - Beneficiaries are defined as those who have been displaced by the dam reservoir, people living upstream, downstream and in catchment areas whose properties, livelihoods, cultures, and non-material resources who have been affected by the dam and its associated facilities (as above, identified as the ‘project area of influence’);
 - Benefits should be negotiated and agreed upon on a project by project basis early in the project cycle (prior to construction) with all beneficiaries.
- Section 13 should also clarify the minimal standards to which the Lao Government will hold developers accountable (for example, compliance with International Finance Corporation performance standards, World Bank Operational Policies and Safeguards, Asian Development Bank Safeguard Policy Statements).
- Section 14 on bringing existing hydropower projects into compliance with the policy should specify the process for such transitions as outlined in Section 8 of the 2005 National Policy on Environment and Social Sustainability of the Hydropower Sector.

International Rivers appreciates the Department of Energy Policy and Planning’s consideration of the above comments. If you have any further questions or clarifications, please do not hesitate to contact us by email (tlee@internationalrivers.org).

Thank you again for your time and consideration.

Sincerely,



Tania Lee
Lao Program Coordinator
International Rivers