



Mekong River Commission

Office of the Secretariat
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Terms of Reference

Commentary on the PNPCA and the PNPCA Technical Guidelines

Post Title:	Designated Senior National Experts
Project:	Development of the "Commentary" for the provisions of the MRC's Procedure for Notification, Prior Consultation and Agreement (PNPCA) and the PNPCA Technical Guideline
Type of Appointment:	Short-term consultancy in the form of Special Service Agreement (SSA)
Duration:	from July to December 2017
Number of working days:	20 working days (non-continuous)
Duty Station:	Home-based with one missions to the regional workshop
Reporting to:	Secretary General/Director General of respective NMC and Director of Planning Division through M-IWRM Specialist, MRC Secretariat
Required deliverables for this consultancy:	Collated records and reports, improved matrix, national meetings facilitation and inputs to commentary note

1. Background

After over 21 months of negotiation, Cambodia, Lao PDR, Thailand and Viet Nam signed the Agreement on the Cooperation for the Sustainable Development of the Mekong River Basin on 5 April 1995 (the 1995 Mekong Agreement) ¹ setting forth the framework for

¹ China and Myanmar (upper Mekong) are not parties to the 1995 MA, but they are dialogue partners to the MRC. Article 39 of the Agreement provides that China and Myanmar may become parties to the 1995 MA only when they accept the rights and obligations under this agreement and the four existing parties have approved it. In early 2016, the Lancang Mekong Cooperation (LMC) has been institutionalized by the six Mekong Countries.

cooperation in a constructive and mutually beneficial manner for sustainable development, utilization, conservation and management of the Mekong River Basin water and related resources.

The Agreement is a framework agreement that contains 42 articles, grouped into six chapters. The LMB countries also signed a one-page Protocol to establish the Mekong River Commission (MRC), consisting of three permanent bodies: the Council, Joint Committee and Secretariat, "with the full authority and responsibility set forth under the Agreement".

As a "framework" agreement, the 1995 MA leaves the finer details to subsequent rules, protocols, or procedures to be negotiated and agreed upon by the parties. The following features therefore characterize its agreement: i) broad principles (Articles 1 and 10) and ii) a flexible framework and continuous process of dialogue and negotiation (Articles 11-33 and 34-35). The major principles of the 1995 MA are: reasonable and equitable utilization of Mekong waters; no substantial harm and state responsibility for substantial damages, dispute management; freedom of navigation; and environmental integrity of the Mekong River, including maintenance of its natural flows.

The 1995 MA tries to balance between "*no right to veto*" and "*no unilateral right to develop without due consideration of other rights*". The embedded principles are that each riparian should utilize the Mekong River system in a reasonable and equitable manner in their respective territories, subject to rules to be established under the Agreement, and in line with the provisions on, the Procedures for Notification, Prior Consultation and Agreement (PNPCA) (Article 5 and Article 26). The PNPCA was approved by the MRC Council at its 10th Meeting on 29-30 November 2003.²

Since the adoption of the PNPCA in late 2003 by the MRC Council and the Guidelines on implementation of the PNPCA in August 2005 by the MRC Joint Committee, the MRC Secretariat have received 51 notifications, however only three projects have been subject to the Prior Consultation process, this includes the Don Sahong Hydropower Project the Xayaburi Hydropower Project and Pak Beng Hydropower Project - the most recent project submitted to the MRC. It is also likely that there will be further water use projects that trigger the Prior Consultation process in the near future. The first two 'Prior Consultation'

² The related Procedures and Guidelines include:

- Procedures for Data and Information Exchange and Sharing, approved 2001
- Procedures for Water Use Monitoring, approved 2003
- Procedures for Notification, Prior Consultation and Agreement, approved 2003
- Procedures for Maintenance of Flows on the Mainstream, approved 2006
- Procedures for Water Quality, approved by the MRC council 26 January 2011

Technical Guidelines

- Guidelines on Implementation of the Procedures for Data and Information Exchange and Sharing
- Guidelines on Implementation of the Procedures for Water Use Monitoring
- Guidelines on Implementation of the Procedures for Notification, Prior Consultation and Agreement.

processes, a 6-month consultation process, which is articulated in the PNPCA, consumed considerable time and resources. The implementation of the Xayaburi and Don Sahong Hydropower Project prior consultation processes also demonstrated a level of ambiguity in interpretation of PNPCA, and thus a need for greater clarity. It is important to learn from this experience, to improve subsequent implementation, providing greater certainty for all member countries with the Prior Consultation process.

To provide clarity around the PNPCA process and its actual purpose (as there is misunderstanding that it is a regulatory approval process), development of a "Commentary" on the provisions of the PNPCA was recommended in the PNPCA lessons learnt workshop (held in February 2016) to supplement the current Guidelines on Implementation of the PNPCA by placing the key provisions of the PNPCA in the wider context of international best practice. Development of the Commentary could be an effective entry point for the improvement of the implementation of the PNPCA. The development of a Commentary to support the implementation of the PNPCA was then discussed at the 3rd meeting of the MRC JP in Hanoi in October 2016, with further clarity on the expectation on the Commentary made by the MRC Joint Platform (JP) and member countries. The MRC JP was supportive of the activity, emphasizing the importance of reviewing and documenting the process of PNPCA internally within the MRC, whilst also drawing from international best practice.

2. Objectives

The MRC member countries, through the MRC Joint Platform, have expressed their intention to re-visit, recall and document different comments and opinions expressed by negotiators of all 4 member countries for the entire negotiation process from the beginning until the end. The intention behind the commentary, as discussed at the PNPCA Lessons Learnt workshop in Bangkok in early 2016, is to review the Mekong Agreement, the PNPCA and Guidelines, and provide a commentary on terminology for greater clarity, whilst learning from international best (more recent) practice. It is believed that it would be useful to improve the current PNPCA and its implementation.

This initiative would be in line with other publications, such as:

- UN Watercourses Convention User's Guide
- Guide to Implementing the Water Convention
- Guidance on the Practical Application of the ESPOO Convention
- Commentary to the 1994 ILC Draft Articles
- 1995 MA Commentaries and commentaries found in the drafting of the PNPCA and Guidelines
- The Explanatory Note- supporting document to the FMMP Working Paper: The Legal Aspects of the Mandate of the 1995 Mekong Agreement for Enhancing Cooperation in Addressing Transboundary Flood and Related Issues
- Documents from the MRC Water Utilization Programme (WUP)

Therefore, by drawing from these examples and the institutional memory of PNPCA negotiation's, and focusing on the PNPCA, Guidelines and Mekong Agreement (where appropriate), the assignment should review each section of the PNPCA.

To some extent the commentary might therefore be viewed as a supplementary document to the Guidelines for the PNPCA, which provides further explanation and draws more from recent developments/ 'best practice' in international law.

3. Specific Tasks and Expected Outcomes

This TOR is developed with relevant NMCs based on discussions during the National Consultations which took place in May and June 2017. The key expected outcomes from the designated senior national experts would include: i) collating and analyzing relevant records and documents for informing the commentary note; ii) interviewing relevant experts and recording collected information into a Matrix, iii) conducting and facilitating internal consultations and reviews of draft commentary; and iv) providing technical inputs to relevant regional meetings and consultations to come up with the agreed commentary note. The designated Senior National Expert will be required to undertake the following:

Task 1: Collate through research, relevant records and documents for informing the commentary note (July 2017)

The designated Senior National Expert will conduct research into all related documents, including but not limited to

- i. Records of the 1995 MA negotiations,
- ii. Preliminary PNPCA, PNPCA, and Guides to Implementation of PNPCA negotiation records and minutes, and
- iii. Related JC and Council Minutes or Statements from 1999 to present.

The expected outcomes: the collated documents will be shared with the MRCS Team in a designated drop-box or other designated storage point.

Task 2: Literature Review: analyze relevant records and documents for informing the commentary note (July-August 2017)

The designated Senior National Expert will conduct a review of relevant documentation and background information for improving the Matrix of Lessons Learned, Challenges and Pending Issues, and to support the drafting of PNPCA Commentary Note.

The expected outcomes: improvement in the Matrix of Lessons Learned, Challenges and Pending Issues.

Task 3: Interview relevant experts/officials for further input into the improvement of the matrix table of lessons learned, challenges and pending issues on implementation of the MRC Procedures (July-August 2017)

Based on the outcomes from the literature review of all relevant minutes and records listed in Tasks 1 and 2 above, the designated Senior National Expert will interview relevant experts and officials to validate and update inputs in the Matrix.

The expected outcomes: Summary notes of the interviews; and ii) improvement in the country's and MRC's content in the Matrix.

Task 4: Conduct and facilitate internal consultation and review of draft commentary (Aug- Sept and Oct-Dec 2017)

The designated Senior National Expert will provide technical input and help NMCs facilitate internal consultation and review of draft commentary note.

The expected outcomes: Summary notes of the internal consultation; and ii) Specific Comments on Draft PNPCA Commentary Note.

Task 5: Provide technical input and facilitation of national input at relevant regional meetings and consultations to come up with the agreed commentary note

Based on the results of Tasks above, the designated Senior National Expert will work with the regional consultant in supporting the Regional Consultation meeting(s) on final draft PNPCA commentary. The final draft will be presented to obtain consensus on amendments to the draft PNPCA commentary. Results from the Regional Consultation will be recorded and reported to the MRC Secretariat.

The expected outcomes: Report/records of the national meeting and inputs to the final draft PNPCA Commentary Note.

4. Deliverables and deadline

Deliverables	Number of days	Deadline
1. The collated documents will be shared with the MRCS Team in a designated drop-box or other designated storage point.	3	Last week of July 2017
2. Improvement in the Matrix of Lessons Learned, Challenges and Pending Issues	3	First week of August 2017
3. Summary notes of the interviews; and ii) improvement in the country's and MRC's content in the Matrix.	5	Third week of August 2017
4. Summary notes of the internal consultation; and ii) Specific Comments on Draft PNPCA Commentary Note.	5	Early September 2017
5. Facilitation and report/records of the national meeting and inputs to the final draft PNPCA Commentary Note.	4	3 rd Week of November 2017
TOTAL	20	July – November

6. Working Arrangement

- **Duration:** the period of this assignment will be from July to December 2017 with 20 working days (non-continuous).
- **Location:** during this consultancy, the designated Senior National Expert will work mainly in his/her own home country, except for the regional meeting at the invitation of the MRCS.
- **Reporting line:** the designated Senior National Expert will report to the Secretary General/Director General of each NMC, and Director of Planning Division of the Mekong River Commission Secretariat. The designated Senior National Expert will work closely with relevant MRCS relevant staff and the regional consultant.

7. Qualifications and requirements

- At least 10-year experience in water law and organizational development in the Mekong Basin and at least one other comparable setting,
- Experience in international development organizations, - MRC or NMCs are preferable.
- Experience in international technical cooperation with a specialization in organizational development and knowledge of Integrated Water Resources Management and Development,
- Prior experience of: Mekong Cooperation, the MRC and the four Member Countries; and
- An in-depth Knowledge of the Mekong Agreement and related procedures and guidelines, UNWC and other relevant Transboundary Water Agreements

8. Conditions of payment

- Final payment of services provision will be made upon submission of invoice of the actual numbers of working day which will be duly checked by M-IWRM Specialist and certified by the Director of Planning. The service fee will be based on a daily rate to be agreed by the MRCS-HR and the National Expert.
- The payment is based on following milestones:

No.	Milestone	Payment	Amount
1	Contract signing	First payment	20%
2	Final reports and services completion	Last payment	80%

- o Travel costs and DSA for participation in any event outside the working duty station of the National Expert will be borne by the MRCS as per MRC's rules and regulations.

9. Intellectual property rights

Information, data, database, knowledge resources in the forms of briefings, reports, proceedings, articles, essays, etc. issued by and for the MRCS will be the MRCS property. Any utility, announcement and disclosure that are without MRCS highest levels of authority' permission is considered illegal and will be charged by relevant local and international legal procedures.

10. Signature Block

MRC Secretariat Division: Planning Division Name of Director: Dr. An Pich Hatda Signature: -----	Date: -----
Consultant Name of consultant: ----- Signature: -----	Date: -----



Mekong River Commission

Personal History Form

(For General Applicant)

Mekong River Commission Secretariat:

P.O. Box 6101, 184 Fa Ngoum Road, Unit 18
Ban Sithane Neua, Sikhottabong District
Vientiane 01000, Lao PDR
Telephone: (856-21) 263 263
Facsimile: (856-21) 263 264

Attach recent
Passport Size Photo

Application Sources: MRCS Website ☐ Job advertisement: Newspaper ☐ On-line recruitment websites ☐ please specify.....
(Please mark the box) Other websites / other sources ☐ please specify

Instructions:

1. Personal History Form (PHF) must be submitted for an application to be valid indicating the application source and other information as required and submitted to the specified address before the deadline.
2. Please answer each question clearly, completely and concisely.

1. Family name:

Given names:

Title:

Dr. / Mr. / Ms.

2. Gender:

M ☐ F ☐

3. Date of Birth:
(dd/mm/yy)

4. Place of birth:

5. Nationality(ies) at birth:

6(a). Current nationality(ies)

6(b). Country of permanent residence:

7. Permanent Address: (registered address)

8. Current Address (if different):

Telephone:

Telephone:

E-mail:
Daytime Telephone:
Mobile:
Facsimile:

9. Marital status: Single ☐ Married ☐ Separated ☐ Widow(er) ☐ Divorced ☐

10. Family members: (Spouse, Children, Parents, Sister, Brother) Please provides details below.

Name (Family Name / Given Name)	Date of birth	Nationality	Relationship

If you have spouse, please specify his/her current occupation and name of organization or company.

11. Name of person to be notified in case of emergency. Please provide complete contact address/ telephone numbers.

12. Have any of your relative (including father, mother, spouse, son, daughter, brother, sister) worked or are currently working, in the Mekong River Commission Secretariat, National Mekong Committee Secretariats, or country line agencies? If yes, please provide names, relationships, and positions.

13. What is your preferred field of work?

14. Knowledge of LANGUAGES: What is your mother tongue?

16. Please indicate the level of your knowledge of other languages.

1= fluent, 2=good working knowledge, 3=fair, 4=basic

Other Language:	Reading	Writing	Speaking	Understanding

17. EDUCATION: Please give exact titles of degrees in original language. Please do not translate or equate to other degrees.

a) UNIVERSITY or equivalent

Name of university, Place, Country	Attended from/to		Degrees and academic distinctions obtained	Main course of study
	Mo/Yr	Mo/Yr		

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b) Other trainings including professional qualifications of specialised training (e.g. Certified Public Accountant, Bar Admission etc.) and part- time study.

Name of school, Place, Country	Attended from/to		Certificates, Diplomas or other qualifications obtained	Main course of study
	Mo/Yr	Mo/Yr		

18. List of your information technology skills in terms of software, programming languages, equipment, and others. Please indicate your proficiency level: High, Average, and Low.

19. Membership in professional societies and activities in civic, public or international affairs.

20. List any significant publications you have written (Please do not attach)

21. EMPLOYMENT RECORD. Starting with your present job, list in reverse order the jobs you have had (do not go back more than 20 years). Use a separate block for each post. If you need more space, please attach additional pages of the same size. Give both gross and net salaries per annum for your present or last posts.

A. Present post (or last post if not currently in employment)

From	To	Salaries per annum (indicate gross or net & currency)		Title of your post:
Mo/Yr	Mo/Yr	Starting	Final	
Name of employer:				Type of business:
Address of employer:				No. and type of employees supervised by you:
				Reason for leaving:

Description of your duties

From	To	Salaries per annum (indicate gross or net & currency)	Title of your post:
Mo/Yr	Mo/Yr	Starting Final	

Name of employer:	Type of business:
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Address of employer:	No. and type of employees supervised by you:	Reason for leaving:
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Description of your duties

From	To	Salaries per annum (indicate gross or net & currency)	Title of your post:
Mo/Yr	Mo/Yr	Starting Final	

Name of employer:		Type of business:	
Address of employer:		No. and type of employees supervised by you:	Reason for leaving:
Description of your duties			
22. Do you have any objection to our making inquiries with your current or most recent employer? Yes <input type="checkbox"/> No <input type="checkbox"/>			
23. Have you previously submitted an application in MRCS? If yes, please indicate the positions and dates.			
24. Have you ever been an employee of MRCS; or hired by MRCS as a consultant, temporary staff, contractual, or others; or NMCS? If yes, please indicate type of employments, positions, periods, and remuneration rates.			
25. Have you ever been arrested, indicated or summoned into court as defendant in a criminal proceeding or convicted, fined or imprisoned for the violation of any law? If yes, please specify.			
26. Have you ever been discharged or forced to resign from any position? If yes, please specify.			
27. If you were selected for the position applied, how soon will you be available to start works after the notification?			

28. REFEREES: Please give details of three people, not related to you, who are familiar with your working experience, working style, qualifications, attitude, and etc, and whom the MRC may contact at any time, preferable your direct supervisors

Full Name/ Position/ Relationship	Full Address	E-mail and telephone contacts

29. State any other relevant facts, including international experience, which may support your application.

30. Are you physically able and willing to travel?

Yes ☐ No ☐ By Air? Yes ☐ No ☐

31. Do you have any disability, which might limit your prospective field of work? (The Secretariat is fully accessible)

Yes ☐ No ☐ If yes, please provide details:.....

32. I certify that the statements made by me in this application form are true, complete, and correct to the best of my knowledge and belief. Permission is given to the MRC to make such investigations as necessary on the information provided. I understand that any misrepresentation or material omission made herein or in any other document requested by the MRC can render a staff member liable to termination of service or dismissal.

Date:

Signature:

Remark: You will be requested to supply documentation / evidence which supports the statements you have made above upon the offer had been notified.