

## **Riparianization of the Mekong River Commission**

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### **Introduction**

In May 2017, over 170 representatives from different interest groups including the Mekong River Commission's (MRC) Secretariat, member countries, development partners, research institutes, media, private sector, and national and international NGOs attended the MRC's 2nd regional stakeholder forum in Vientiane in the Lao People's Democratic Republic (PDR). The Regional Stakeholder meeting was the second forum this year as part of the Procedures for Notification, Prior Consultation and Agreement, or the PNPCA process, initiated by the MRC to allow the four member countries, the Lao PDR, Thailand, Viet Nam and Cambodia<sup>1</sup> to discuss the planned Pak Beng dam.

The forum illustrates regional engagement and dialogue in the basin around infrastructure development and planning. Dam construction is thriving in this region where hydropower is seen as a major source of income through revenues and as a source of renewable energy (Grumbine & Xu, 2011). One hundred tributary and mainstream dams are either under construction, licensed or planned in the Lower Mekong along with 8 mainstream dams in the upper Mekong underway (IR, 2013; Merme et al., 2014, p. 21). The Pak Beng and Xayaburi dams will be some of the larger dams constructed in the region, financed by a diverse mix of private actors, including regional banks and international energy companies, who enjoy relative complete decision making power over water resource management (Merme et al., 2014).

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<sup>1</sup> The two upstream riparians—China and Myanmar—are not included in the MRC and do they commit themselves to any agreements or decisions of the MRC. China regularly participates in Dialogue meetings and has agreed to share hydrologic data and information on river flows and dam operations. See Onishi (2007) for more on historic conflicts between China and its neighbors; Chen et al. (2013) on China's treaty practice on transboundary waters; and Lee (2015) for more on benefit sharing in the Mekong River basin between China and the downstream countries.

Image 1: The Mekong subregion and location of selected Mekong mainstream dams in Laos



Source: Adjusted from Haefner, 2013

The rapid development of mainstream dams on the lower Mekong, coupled with pressure from the donor community for the MRC to be more self-sufficient, triggered a restructuring process for the MRC. The restructuring process, commonly referred to as 'riparianization,' aims to increase the efficiency and effectiveness of the MRC and transition it into a self-financed institution by 2030. It is a process of localization and decentralization characterized by structural staffing, budgeting and programmatic reforms. In this paper, we examine the riparianization process underway and also highlight the need to correct flawed governance processes. For both practitioners and scholars, we argue that the MRC's riparianization process offers some important insights into how RBOs evolve and change but also reflect broader debates around the role of development in regional water governance.

## Setting the stage: Background and history

As the largest river in Southeast Asia and the eighth largest in the world, the Mekong River holds enormous economic and ecological resources as well as political significance extending to all six countries through which it flows: China, Burma, Thailand, Cambodia, Viet Nam and the Lao PDR. The river has historically played an important role in regional development but it has also been at the center of human conflict and wars for several hundred years. The Mekong holds strategic importance as the center for food and employment, and plays a crucial role in the future development of the countries in the basin.

Dating back to the 1995 Agreement on the Cooperation for the Sustainable Development of the Mekong River Basin, signed by Thailand, Lao PDR, Cambodia, and Viet Nam, the MRC was established to promote cooperation within the basin in all fields of sustainable development, utilization, management and conservation of the water and related resources under the treaty. The MRC relies on a governance structure consisting of a high-level ministerial decision-making body (Council), a more technical operationalization body (Joint Committee) and the MRC Secretariat as well as national coordinating entities, or National Mekong Committees (NMCs). Historically, the work of the MRC has been structured around programs under the purview of the

Secretariat, including 12 that focused on issues such as river-basin development planning, fisheries, flood management, and other topics related to technical capacity.

Historically, the MRC has been regarded as relatively successful in mitigating conflicts and maintaining cooperation in the basin (Delli Priscoli, 2009, p. 29; Ha, 2011), contributing to international cooperation and notions of regional security (Jacobs, 2002, p. 363). Some of the MRC's programs, like Flood Management and Mitigation Program and the Initiative on Sustainable Hydropower, have been associated with adaptive capacity-building that helps reduce uncertainty and support adaptation in the basin (Heikkila et al., 2013). Yet, some critics see the MRC as ineffectual, sidelined by its own member-states insisting on absolute national sovereignty, and marked by mistrust and miscommunication (Lebel et al., 2005; Sajor et al., 2013). Although stakeholder involvement has improved in recent years, the MRC is seen by some as a distant organization, inaccessible to both NGOs and communities and reluctant to protect weaker states or elements of society vulnerable to the impacts of development (Dore & Lebel, 2010; Hirsch & Jensen, 2006, p. 51; Kirby et al., 2010).

### **Calls for reform: The origins of riparianization**

Origins of the MRC's riparianization process date back more than a decade. In 2006, an independent review was commissioned in response to what was seen as a growing dissatisfaction with the MRC's performance by member countries and donors. The review suggested a larger organizational restructure to improve the MRC Secretariat, the National Mekong Committee and the various line agencies. It highlighted an overuse of international staff by the MRC Secretariat and an inadequate selection process and retention procedures for riparians, or staff from member states (Hawkesworth et al., 2007, pp. 37-38). Donors echoed these concerns suggesting that if the MRC wants to develop as a world class river basin management organization, then its hiring and retention procedures "need to attract, appoint and retain the best and brightest from the Mekong member countries" (MRC Donors, 2008).

The call for reform of the MRC's organizational structure have been acknowledged by the MRC in several subsequent reports and evaluations, especially the Independent Organizational, Financial and Institutional Review (MRC, 2007) and the Mid-Term Review of the Strategic Plan (MRC, 2009). The 2007 review argues: "While to date it may have been appropriate for member countries to view the MRCS [MRC Secretariat] as a training ground, the long-term sustainability and credibility of the organisation will depend on its depth of corporate knowledge and experience, particularly in the unique technical and transboundary planning skills that form the cornerstone of its strategic advantage. The human resource management functions in MRCS and the NMCSs [National Mekong Committees] need to be strengthened considerably if the riparianisation and professionalisation of the organisation is to be successful" (MRC, 2007, p. iv). Riparian countries, such as Lao PRD, generally supported riparianization but cautioned that the process should not aim only on the ownership of the MRC Secretariat, but also strengthening the MRC Secretariat to be able efficiently implement the MRC programmes and projects to achieve our goals and objectives in order to build up trusts and gain supports from our development partners (Sinhbandit, 2008).

Following these reviews, the MRC and its member states recognized the need for reform and

made steps towards to heighten its effectiveness. But the process to riparianization has been slow, especially around modernizing employment practices at the MRC (Molle et al., 2009, p. 374). Critics have raised concerns about the MRC's reliance on international staff, especially in the highest positions of authority (Molle et al., 2009, p. 374), or to note the MRC's heavy donor and international organization involvement (Schmeier, 2013). In 2010, riparian professionals represented 44 percent of the MRC Secretariat's workforce of 154 staff persons across its two offices in Phnom Penh and Vientiane, Lao PDR (Cosslett & Cosslett, 2014, pp. 163-64). Over 90% of the funding came from external donors including Australia, Sweden, Germany and the Asian Development Bank in 2011 (MRC, 2012). Due to extensive increases in donor funding from US \$8.56 million in 2000 to US \$23.36 million in 2012, the contribution of riparian countries percentage to the total actually decreased from 8.23% in 2000 to 7.25% in 2012, with an increase of contribution from US \$1 million to US \$1.8 (Cosslett & Cosslett, 2014, pp. 163-64).

### **Riparianization at the MRC**

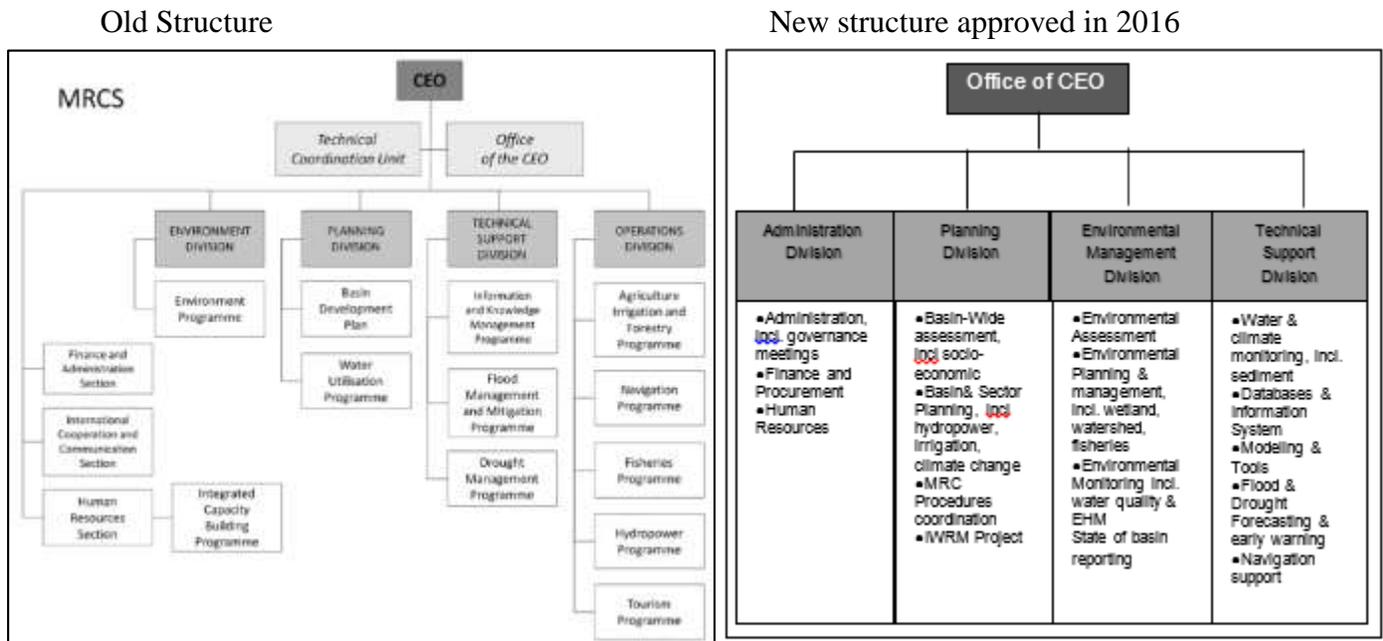
Despite the delays and build-up, the Mekong River Council, the MRC's high-level ministerial decision-making body, formally initiated the riparianization process in 2014. The first phase is presently underway. The overall goal is to transfer some of the MRC tasks and responsibilities around implementation and financing to the riparian governments over time. Key changes include a reduction of international and riparian staff from around 180 staff members, and a budget of US\$20 million, to 66 staff members. This was driven by external funding cuts, mainly the withdrawal or downsize of several donors due to the rapid development of mainstream dams on the Lower Mekong at the same time when the MRC Strategic Environmental Assessment suggested that "decisions on mainstream dams should be deferred for 10 years" (ICEM, 2010, p. 22) as well as the goal of the MRC to be self-sustained by 2030 (Hunt, 2016).

To achieve these goals, there will be an annual 10 percent increase of the financial contributions from the member countries. Due to the rising criticism around reliance on donor funding, the riparian states have committed themselves to increase their collective contribution to be fully self-financed by 2030 (Cosslett & Cosslett, 2014). This will be challenging given the relative lack of wealth of the riparian countries in the Lower Basin. Part of the restructuring process is also the forthcoming merger of the MRC Secretariat in Phnom Penh to the MRC Secretariat in Vientiane in late 2017 in order to reduce operational and travel costs in running two offices. It is also for the first time since its foundation that the MRC Secretariat has a CEO from the Mekong region; Pham Tuan Phan from Viet Nam who has served since January 2016 (Vietnamnet, 2016).

The riparianization process also consists of identifying core river-basin management functions and the technical, financial and human resources required to effectively fulfill them as well as increasing member states' ownership in providing these resources themselves instead of relying on external resources (Gerlak & Schmeier, 2014, p. 363). The decentralization process includes the reduction of the MRC Secretariat from 12 programs under 4 divisions (including the Environment, Basin Development, Fisheries, Navigation and Hydropower Programme) to 4 core functions including Administrative, Planning, Environmental Management and Technical Support Divisions (MRC, 2016a). These changes in structure include fostering national plans, projects and resources based on basin-wide perspectives, strengthening regional cooperation,

improving monitoring and communication of Mekong basin conditions and achieving a leaner river basin organization which focuses on the core function as opposed to running various programmes (MRC, 2016c). Image 2 below contrasts the new structure of the MRC Secretariat approved in 2016 with the older structure.

Image 2: Structure of the MRC Secretariat, Old versus New



### Correcting flawed governance: The MRC’s Procedures for Notification, Prior Consultation and Agreement process

The Procedures for Notification, Prior Consultation and Agreement (PNPCA) process has been used twice, for the Xayaburi and the Don Sahong Dam. In both cases, it failed to achieve agreement in either the JC or the Council. As a result, the decisions were put back to the riparian countries to solve the matter through diplomatic means. We argue that riparianization of the MRC should be about more than staffing, budgeting and programmatic change but should also correct flawed governance like the PNPCA.

In practice, the PNPCA process takes approximately six months and includes a series of different steps, from informing the member country that it has the intention to undertake the prior consultation process to hearing the concerns of the public and interested parties during national and regional consultations held by the MRC Secretariat and the NMCs of each country. After the end of consultation process, the JC’s goal is to reach a unanimous agreement, which may include recommendations by the notified countries and for the proposing country to accept some measures to mitigate possible impacts (MRC, 2016b). If the JC is unable to come to an agreement, the decision is delegated to the MRC Council, the highest decision-making body. If

the Council is also unable to solve the matter, the decision is referred to the riparian governments to solve the matter through normal diplomatic channels.

The Xayaburi project was the first case to test the consultation process procedure. It revealed several flaws and deficiencies of the process, most notably that the process was too abbreviated for the depth of the consultation necessary (Cosslett & Cosslett, 2014, p. 163). Then, when Lao PDR began dam construction without consulting other riparian members, this action suggested a lack of oversight or enforcement mechanisms necessary “to safeguard the credibility and integrity of the MRC as an international organization guided by international water law for the sustainable development of a major international river basin” (Cosslett & Cosslett, 2014, p. 163). Similar to the Xayaburi project, the Don Sahong case started the PNPCHA process in July 2014, however in early 2015 the MRC Council could not agree if the process should come to an end and transferred the decision to the respective governments. The most recent hydropower development on the mainstream in Laos is the Pak Beng Dam which will be built in the Oudomxay Province in northern Laos in. The consultation process for Pak Beng started in late 2016 with the project having an installed capacity of 912 MW, 16 units, a total cost of estimated USD 2.372 billion and a planned completion date in 2024 (Lao PDR Ministry of Energy and Mines, 2017).

Although no agreement was reached in the two previous PNPCHA processes, as part of the PNPCHA process around the Pak Beng dam, the subject of discussion at the recent 2017 stakeholder forum in the Lao PDR, the MRC has acknowledged some lessons learned. These include the importance of releasing all of the received documents to the public in a timely matter; arranging consultation times earlier in the PNPCHA process; translating the necessary documents into the riparian languages; including the developers in the process; and ensuring that roles and expectations of the process are clear (MRC, 2017a).

However, although many of the improvements have been made in recent years and can serve to improve the PNPCHA, the key challenge remains the implementation of the outcome of the PNPCHA into a unanimous decision by the JC or Council. As the current PNPCHA process demonstrates thus far, it is likely that the PNPCHA process for the Pak Beng dam will result in a similar outcome and the decision will again be put back to the national diplomatic channels. The flawed governance process of the PNPCHA ultimately challenges the legitimacy and authority of the MRC, and hinders its true ability to serve as forum for international dialogue, even though the MRC Secretariat has little influence on the outcome of the PNPCHA process and the decision of the riparian members in the JC or the Council.

In addition to the observations made at the PNPCHA consultation process in May 2017, another important aspect was the lack of up-to-date data in the documentation provided by the developers of the Pak Beng Dam, China Datang Overseas Investment (Datang). Most data was based on old data sets covering the ‘pre-Lancang’ period before 2012. For instance, in regards to hydrology, historical data sets from 1960-2007 combined with actual on site studies between 2008 and 2014 were used. This data was not compared with recent data from the MRC Discharge and Sediment Monitoring Program (DSMP). Similarly, the result on fish numbers, types and sizes varied significantly between the data from Datang and the MRC. Overall, concerns were raised about the recorded number of fish species around the Pak Beng site, lack of use of updated data in

regards to sediment flow (which changed significantly after the start of operations of China's hydropower dams in 2014), the lack of research in regards to impact on the Thai site in close proximity to the dam, and missing consultation and coordination with the Xayaburi Dam around 250 kilometer downstream of the Pak Beng Dam.

The developers also lacked engagement with MRC procedures for instance the Procedures for the Maintenance of Flows on the Mainstream (PMFM) and overall did not refer to MRC data which is available for everyone. As stated in the forum by a speaker: "MRC data is available for everyone, but can't be enforced on people". In regards to dam safety, the data was mostly aligned with the Preliminary Design Guidelines (PDG); whereas the navigation lock was not aligned with it. When a MRC representative was asked about the comparison between the quality of documents and data available for Pak Beng in comparison to Xayaburi and Don Sahong, the answer was clear: "the two previous projects [Xayaburi and Don Sahong] included more surveys, more baseline data and used more MRC data; this is not given in the documentation provided by the developers for this PNPCA process", which again shows the limitations and lack of authority of the MRC.

On 19 June 2017, the MRC Joint Committee agreed on a statement and called on the Lao Government to make all reasonable efforts to address potential adverse transboundary impacts of the Pak Beng project, and requested the MRC Secretariat to prepare a Joint Action Plan outlining a post six-months prior consultation process.<sup>2</sup> It is still to be seen if and how these recommendations are taken up in the project and if this will help to mitigate some of the raised concerns in regards to the Pak Beng Dam.

## **Conclusions**

Pressures are reaching a threshold in the Mekong River Basin, exacerbated by population growth and urbanization, and increasing demands for agricultural and fisheries production (Kirby et al., 2010). Severe drought in 2016 has impacted food security and livelihoods throughout the region, highlighting the need for better governance and management (Weatherby, 2016). The scope, extent and pace of planned hydropower project will likely continue to challenge regional cooperation. These challenges demand viable working institutions.

RBOs, like the MRC, can provide long-term cooperation over shared watercourses but they must evolve to solve new problems that arise in basins as a result of environmental, socio-economic or political change (Goulden et al., 2009; Gerlak & Schmeier, 2013). Key to this are well-functioning river-basin governance mechanisms (Gerlak & Schmeier, 2016), and the capacity to solve disputes that emerge due to change (DeStefano et al., 2010; Lebel et al., 2010). We argue that reform through riparianization in the MRC should entail more than staffing, budgeting and programmatic reform but also address flawed governance processes.

Researchers caution that any redesign of the Mekong regime should consider the complex economic and institutional dynamics along with a better understanding of the key basin

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<sup>2</sup> For more information and the statement of the MRC JC on the 19<sup>th</sup> June 2017, refer to MRC (2017b) Statement on prior consultation process for the Pak Beng hydropower project in Lao PDR, <http://www.mrcmekong.org/assets/Uploads/Statement-Final-PBHPP-PC-Conclusion-240617.pdf>

ecosystem properties (Sokhem et al., 2009). Ultimately, proper institutionalization and country-level ownership of the MRC activities demand that decentralized activities of the MRC are adopted and integrated into national sector policies, plans and budgets (MRC, 2016). While a functional MRC secretariat with technical expertise is critical, just as important are social and political representation to guarantee successful implementation of projects and avoid delays, ongoing changes and interruptions (Haefner, 2016). The availability of sufficient human, technical and financial capacities of member states to fulfill newly gained responsibilities is a necessary condition of riparianization (Schmeier, 2010, p. 5).

Reform efforts underway at the MRC, which call for more self-reliance and less dependence on external support, mirror broader debates around the role of development in regional water governance. As such, they raise important questions: Is it reasonable to expect low-income nations to become rapidly self-reliant? And even if those countries were able to muster the resources to address growing challenges, would western institutional models be most appropriate? In particular, to what extent does the design of RBOs like the MRC suitably reflect prevailing political, economic, social and cultural contexts? What are reasonable expectations for both riparian countries and donors in terms of capacity, ownership, sustained regional governance, and above all, fruitful regional coordination and cooperation? How we answer these questions will ultimately, shape the success of the MRC's reform efforts, and of regional water governance more broadly.

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