

Social Assessment for International Rivers Proposed CEPF Project: Protecting the Mekong River's Critical Ecosystems and Biodiversity from Hydropower Development

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Indigenous People and the Expected Impacts of the Mekong Mainstream Dams

An estimated 60 million people live in the Mekong River Basin, including over one hundred ethnic groups. Each of the Lower Mekong countries that will bear the impacts from the Xayaburi and other mainstream dams is home to diverse ethnic groups with an array of distinct languages and cultures.¹ Many of these groups and their cultures and traditions are indigenous to the region. The extensive impacts of the Lower Mekong dams on livelihoods and natural resources in the basin areas will have disproportionate effects on the lives, well-being, and cultural integrity of indigenous and ethnic minority groups in each of the Lower Mekong Basin countries.

According to the World Bank, their policy on indigenous peoples, underscores the need for their staff and work to identify indigenous peoples, consult with them, while ensuring that they participate in, and benefit from their activities in a culturally appropriate way - and that adverse impacts on them are avoided, or where not feasible, minimized or mitigated. International Rivers aims to uphold this policy, while also respecting international laws regarding the rights of indigenous peoples. This includes upholding, the UN Declaration on the Rights of Indigenous Peoples (DRIPS)² and the UN Declaration on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities (DRM),³ which set out the rights of indigenous peoples and ethnic minority groups to protection by the state of their existence and cultural identities, to enjoy and practice their cultures and traditions, maintain and develop their lands, territories and resources and participate in decisions that affect them and the realization of their human rights. The instruments reference the right of ethnic minority and indigenous peoples to enjoy their own cultures, languages and religions, which is affirmed in Article 27 of the International Covenant on Civil and Political Rights (ICCPR) and Article 30 of the Convention on the Rights of the Child (CRC). Thailand and Lao PDR are both party to each of these instruments.

The minority and indigenous groups in the areas that will be affected by large dams in Laos and Cambodia already experience considerable disadvantage, including high levels of poverty, lack of infrastructure and access to government services, creating a situation of structural marginalization and a lack of education, healthcare, opportunities, political participation and representation.⁴ The lifestyles of these groups reflect the working definition of Indigenous Peoples used by the UN Permanent Forum on Indigenous Issues (UNPFII).⁵ This includes the

¹ Cambodia has an estimated 36 minority groups, comprising 4% of the population; Thailand has 9 main ethnic minorities comprising 1.22% of the population; Lao PDR has 48 groups making up 47.5% of the population; Vietnam has 54 groups accounting for 14% of the population. See MRC SEA study, p. 107, at note 14.

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

³ UN General Assembly, *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*, 18 December 1992, A/RES/47/135.

⁴ International Fund for Agricultural Development (IFAD) and Asian Indigenous Peoples' Pact (AIPP), *Country Technical Notes on Indigenous Peoples' Issues: Lao Peoples Democratic Republic*, Nov. 2012, at p. 4.

⁵ IFAD & AIPP, Nov. 2012, p. 2, at note 78.

groups that comprise the Lao Theung minority, many of whom reside in the areas proposed for dam development inside Laos.⁶ The Xayaburi Dam's environmental impact assessment estimates that 43.37% of people affected by the Xayaburi Dam are ethnic Lao Theung, although the assessment did not differentiate between different sub-ethnicities of Lao Theung.⁷

Other areas predicted to be heavily affected by the mainstream dams include Cambodian fishing communities in Stung Treng and Tonle Sap, and agricultural and fishing dependent communities in Vietnam. Many of these communities consist of ethnic minorities and indigenous peoples. These groups are heavily dependent on access to natural resources and wild products, including aquatic species, for their food, nutrition, livelihoods and survival, and have low levels of occupational or income source diversity.⁸ The loss of fisheries and resulting threats to food security and risks of wasting, stunting and other poverty and nutrition related diseases are thus higher, and the human rights impacts likely to be disproportionately felt by these groups.⁹ For example, the Cham (Muslim Khmer) near Stung Treng in Cambodia are almost completely dependent on fisheries for their livelihoods, and have developed complex knowledge and skills around fisheries together with a semi-nomadic lifestyle.¹⁰ Losses to fisheries would result in severe food shortages for these groups, as well as major impacts on lifestyle, traditional knowledge, and cultural systems.

Article 8 of the DRIPS recognizes the right of indigenous peoples and individuals not to be subjected to forced assimilation or destruction of their culture, as is occurring through involuntary resettlement prompted by the Xayaburi dam. States are required to prevent or redress any action which has the aim or effect of depriving indigenous groups of their integrity as distinct peoples, or of their cultural values or ethnic identities, or of dispossessing them of their lands, territories or resources (Article 8(a) and (b)). The DRIPS affirms the right of indigenous groups to the lands, territories and resources that they have traditionally owned, occupied or used (Article 26) and to protection of the environment and the productive capacity of these lands (Article 28). The DRIPS further requires that no relocation take place without the free, prior and informed consent of the indigenous peoples concerned (Article 10).

The DRIPS and the DRM require state protection for the integrity and identity of indigenous and ethnic minority groups, including their cultural identity, and recognize the right of indigenous and minority peoples to practice their cultural traditions and customs, subsistence and economic activities (DRM Article 2, DRIPS Article 20). Both DRIPS and DRM affirm a right of indigenous and minority groups to participate in decisions around matters that will affect their rights and development, including health, housing and other social programs (DRIPS Articles 18, 23). None of these conditions have been met with respect to the planning and development of the Xayaburi Dam and the relocations undertaken to date. Communities have been deprived access to lands and resources and traditional livelihoods have been removed or replaced without the consultation or participation of affected groups, or concern to ensure cultural integrity or identity is preserved. The likelihood that economic benefits from development of the Xayaburi and other

⁶ MRC SEA study, p. 112, at note 14.

⁷ Xayaburi Hydropower Project, Environmental Impact Assessment (2010), section 5(20), at note 19.

⁸ MRC SEA study, p. 111, at note 14.

⁹ MRC SEA study, p. 106, at note 14.

¹⁰ MRC SEA study, p. 114, at note 14.

dams will accrue in any significant way to indigenous and minority groups is lessened by the lack of participation by these groups in decision-making and existing development policies that are not tailored to the specific needs of diverse peoples.¹¹ The SEA study predicts that the projects will result in increased inequality and poverty among affected communities, particularly during the 29-year concession period when most economic benefits will flow to the project developers and financiers.¹²

The DRIPS and the DRM further recognize the right to practice and maintain cultural traditions and to protect and develop historical and other sites of cultural and religious significance (DRIPS Articles 11, 12). The MRC Secretariat is the main regional institution charged with researching and monitoring development along the river, but it does not have an explicit focus on cultural rights. As a result, while the Xayaburi and Lower Mekong dams are likely to have extensive cultural impacts, these remain poorly understood. Scholars estimate that people first began to settle along the Mekong River around 4,000 years ago, leaving a rich cultural heritage. Numerous Buddhist and Animist traditions and history are tied to the river. For many communities, the Mekong River houses Naga spirits that are central to the communities' identities.¹³ Physical displacement and the stresses placed on the livelihoods of these communities could affect traditional networks and customs. While some cultural sites such as temples can occasionally be replaced in kind, others such as burial grounds and spirit forests cannot be easily replaced to the satisfaction of communities.

Natural heritage is also at risk across the Lower Mekong Basin. The SEA estimates that the dams could drive 41 critically endangered species, including the sacred Mekong Giant Catfish, into extinction.¹⁴ Several heritage sites and tourism attractions are also at risk, for example, the Pha Daeng cave upstream of the Xayaburi Dam site, Pak Ou Buddha caves near Luang Prabang, Lao PDR and the Khone Phapheng Falls in southern Lao PDR, among others. The city of Luang Prabang has been a UNESCO World Heritage Site since 1995. The Xayaburi Dam environmental impact assessment also notes that there is "beautiful scenery along both banks with high potential for ecotourism due to the mountainous area."¹⁵ Further impact studies are necessary to understand the extent to which people's cultural rights are at risk and the income potential that would be lost in the tourism industry due to the dams. Engagement is also needed to ensure that government decision-makers take appropriate consideration of these impacts.

International Rivers Work on Free, Prior and Informed Consent with Indigenous People in the Project Areas

Communities living along the Mekong River have also been consulted in meaningful ways regarding their concerns with the plans to build the Mekong dams and their demands to stakeholders, however, free, prior and informed consent has not occurred with indigenous people for solely the purposes of this grant proposal's activities, but rather has taken place in terms of

¹¹ IFAD & AIPP, Nov. 2012, p. 13, at note 78.

¹² MRC SEA study, pp. 12-13, at note 14.

¹³ Pathom Hongsuwan (2011), *Sacralization of the Mekong River through Folk Narratives*, *Manusya: Journal of Humanities*, no.19. Accessible at: <http://www.manusya.journals.chula.ac.th/files/essay/Pathom_p.33-45.pdf>.

¹⁴ Zeb Hogan, *Why We Shouldn't Dam the Mekong* (8 Dec. 2011), *World Rivers Review*. Accessible at: <<http://www.internationalrivers.org/node/1643>>.

¹⁵ Xayaburi Hydropower Project, *Environmental Impact Assessment* (2010), section 4(158), at note 19.

understanding the concerns people have as well as their demands, so that International Rivers can promote these in the activities. Consultations have taken place through direct communication that takes place, either via interviews during field visits, and concerns expressed during meetings and workshops. As many of the communities we work with have indigenous people, International Rivers will at times work directly with the communities living along the Mekong River through the research we will carry out in area affected or to be affected by large-scale hydropower projects that are planned or under construction on the Lower Mekong River's mainstream in Laos and Cambodia. The information gained from the fieldwork helps to guide the formulation of our position on projects, as well as the concerns and demands that are put forward in our campaigning. Communities are approached with all due respect to the socio-economic contexts and with cultural sensitivity.

Measures to avoid negative impacts to Indigenous People in Project Areas

We initially seek to introduce ourselves to the village headman and/or respected representatives of the community leadership and discuss issues ranging from livelihood and environmental concerns to perceptions of community change (positive and negative) using an open and flexible process. Subsequent to this initial discussion, field researchers proceed by engaging in open-ended discussions with small groups of villagers or individuals. Due to the current political sensitivity of the issue in Laos, it is not possible to ask direct questions related to opposing hydropower, as it would place the villager at risk for possibly opposing government plans. In Cambodia, the sensitivity of hydropower changes on a regular basis depending on the project, the positions local authorities, and the changing political and free speech environments. In these contexts, International Rivers will often carry out long individual interviews in the privacy of homes in order to reach a comfort level of the interviewee, in which they can express their hopes for the future and their concerns with current development plans. Perspectives attributed to these interviewees are recorded, but unless otherwise requested by the people themselves, interviews are conducted under a condition of anonymity given the sensitivities surrounding hydropower development in Laos and Cambodia. International Rivers recognizes the methodology is based on first-hand accounts and narratives, and does not claim the data is statistically representative. However, we are confident that over time, our on-the-ground documentation provides an accurate indication of broader concerns within the community. As we are not sufficiently equipped to visit the project sites on a very regular basis, we also rely upon our most trusted partners who work in targeted villages along the Mekong River to consult with villagers and seek to verify the findings with others who are also working in these communities when possible.

How Measures will be Monitored

International Rivers will ensure that all staff and/or hired consultants carrying out fieldwork will be adequately briefed on what to expect and how to behave within the project areas. Initial fieldwork is often in the accompaniment of an existing staff member, so that the staff can learn from doing and their behavior is monitored and corrected as needed. As we hope that our work will benefit and accurately represent the needs and desires of the communities we work with very seriously, International Rivers does not tolerate any behavior by staff members that may not be culturally appropriate or may risk posing negative impacts. When we have had staff members who have not performed according to our high level of professionalism in the field, we have restricted their ability to conduct further fieldwork.

International Rivers' Grievance Mechanism

International Rivers welcomes feedback from its partners, the riparian communities it works with, as well as from the general public. Should any complaint be made either verbally, written or via a third party, International Rivers Southeast Asia office will be responsible for recording all of the information related to it and carry out any necessary investigations and then promptly report the complaint and findings to our headquarters office, in order to determine appropriate remedy to ensure that our staff members and the advocacy work that we do is for the benefit of local communities. Furthermore, wherever International Rivers or its sub-grantees work in a community with indigenous peoples, they will be provided with the contact details of International Rivers and the CEPF Regional Implementation Team at IUCN. If any grievances are raised with International Rivers, we will immediately bring them to the attention of the Regional Implementation Team and the CEPF Secretariat. We take all feedback seriously and will take actions accordingly to ensure that local communities and their views are respected to the highest regard.