

Time to Walk the Talk on “Responsible Lending” :

The Case of Luang Prabang Hydropower Project

Fair Finance Thailand
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Project Overview

In 2019, the Government of Lao PDR formally notified the Mekong River Commission (MRC) of its intention to proceed with the Luang Prabang Hydropower Project (LPB dam or LPHPP). The LPHPP is the fifth Lower Mekong mainstream dam to undergo the MRC Prior Consultation process, a requirement under the MRC's Procedure for Notification, Prior Consultation and Agreement (PNPCA).¹ Prior Consultation takes place over a minimum period of six months, and must be completed before construction of the dam is initiated (see Annex 1, for brief explanation of the PNPCA).²

The LPHPP is the second of a cascade of hydropower projects being constructed on the main stem of the Lower Mekong River. The Xayaburi dam, located 130 kilometres downstream from the Luang Prabang dam, has been operational since 2019, while the Pak Beng dam further upstream has already completed the Prior Consultation process. The project site lies approximately four kilometres upstream of the confluence of the Nam Ou and Mekong rivers, and about 25 kilometres upstream of Luang Prabang town, a UNESCO World Heritage site.

The LPHPP will have an installed capacity of 1,460MW and all of the electricity will be sold to Thailand, with the state-owned Electricity Generating Authority of Thailand (EGAT) being the sole off-taker.³ According to CK Power PCL, the main shareholder in the company developing Luang Prabang dam, initial construction is underway and main construction work is expected to start in January 2023, with commercial operations scheduled for January 2030.

Luang Prabang Power Company Limited (LPCL) was established in Laos to develop the project. As of 1 October 2022, the company's shares are majority held by (52% total) by CK Power PCL (42%) and CH Karnchang PCL (10%), two companies from the same investor group in Thailand that previously built and operate the Xayaburi Hydropower Project. PT Sole Co. Ltd holds 38% share, and Petro Vietnam Power Corporation (a subsidiary of Vietnam Oil and Gas Corporation) holds the remaining 10% shares. On 24 November 2022, CK Power's shareholders approved increasing its share of LPCL to 50%, the transaction for which is expected to be completed in December 2022.⁴

¹ Information and documents related to the LPHPP Prior Consultation process is available on the MRC website: <https://www.mrcmekong.org/news-and-events/consultations/pnpca-prior-consultations/luang-prabang-hydropower-project/>

² Article 5.4.3 of PNPCA states that "The notifying State(s) shall not implement the proposed use without providing the opportunity of the other Member States to discuss and evaluate the proposed use." <https://www.mrcmekong.org/assets/Publications/policies/Procedures-Notification-Prior-Consultation-Agreement.pdf>

³ CK Power, Information Memorandum of CK Power Public Company Limited Re: Transaction on Acquisition of Assets and Connected Transactions in Luang Prabang Power Company Limited, p.1: <https://ckp.listedcompany.com/newsroom/071120221750180422E.pdf>

⁴ CK Power's Extraordinary General Meeting on 24 November, approved increasing CK Power's equity in LPCL to 50%, which CK Power expects to complete by December: <https://ckp.listedcompany.com/newsroom/241120221744210767E.pdf>

LPHPP Prior Consultation Process and Thai Mekong community concerns



The LPHPP Prior Consultation process officially started on 8 October 2019 and consisted of a series of national and two regional information sharing and consultation workshops.⁵ During the LPHPP Prior Consultation Process, many stakeholders raised concerns over the project and the inadequate data provided to properly assess the project's impacts, especially transboundary and cumulative impacts. The Prior Consultation process concluded on 30 June 2020, with the MRC Joint Committee issuing a Joint Statement, calling on the "Government of Lao PDR to make every effort to address any potential transboundary adverse impacts,"⁶ Yet, to date no meaningful actions have been taken to address transboundary impacts and concerns raised by civil society, communities and other member countries during the Prior Consultation process.

In Thailand, the Thai National Mekong Committee organised three national information sharing sessions as part of the LPHPP Prior Consultation process: the first was held in Nakhon Phanom on 24 December 2019; the second in Amnaj Charoen on 28 January 2020; and the third in Loei province on 25 February 2020. On the scheduled completion date of the Prior Consultation process, the Thai Mekong People's Network, which comprises villagers from eight provinces in North and Northeast Thailand, issued a public statement with four key demands:⁷

1. The Thai government should cease its support for and firmly assert its stand against the construction of the Luang Prabang dam and other dams on the Mekong mainstream.
2. The Electricity Generating Authority of Thailand (EGAT) should not buy power from the Luang Prabang dam because Thailand is now facing an electricity glut.
3. The Prior Consultation process is flawed and must be reformed; and that the Luang Prabang dam be the last project to undergo the Prior Consultation process until the Mekong Agreement 1995 and the PNPCA is reviewed
4. Thai government and EGAT disclose all relevant information and to conduct a study of the emerging impacts as well as to remedy the damages to ensure the balance and sustainability of the Mekong's ecology.

As of 30 November 2022, none of the Thai Mekong People's Network demands have been met. Fair Finance Thailand urges Thai financial institutions who may be considering financing LPHPP to carefully assess environmental, social, and governance (ESG) risks associated with the project. There are at least six major areas of ESG risk pertaining to LPHPP, which are outlined in the next section.

⁵ Key events undertaken as part of the LPHPP Prior Consultation is outlined in "Table 2 - 1 The detailed roadmap for the Luang Prabang prior consultation process" in MRC Technical Review Report: Prior Consultation for the Proposed Luang Prabang Hydropower Project (June 2020, p.15-16): <https://www.mrcmekong.org/assets/Publications/TRR-of-LPHPP.pdf>

⁶ MRC, 30 June 2020, Statement on the Prior Consultation Process for the Luang Prabang Hydropower Project in Lao PDR, p.2: <https://www.mrcmekong.org/assets/Publications/MRC-Statement-on-PC-for-Luang-Prabang.pdf>

⁷ Thai Mekong People's Network, 7 April 2020, Public Statement – Don't Buy Power from Luang Prabang Dam: Mekong Dams are Unnecessary for Thailand's Power Sector (English Translation): <https://www.mymekong.org/document/public-statement-dont-buy-power-from-luang-prabang-dam-mekong-dams-are-unnecessary-for-thailands-power-sector/>



Notable ESG risks of Luang Prabang Hydropower Project

1. Power Purchase from this dam is unnecessary for Thailand due to capacity glut

Luang Prabang Power Company Limited signed a Tariff MoU with EGAT in April 2022,⁸ but as of 30 November 2022, a Power Purchase Agreement (PPA) has not yet been signed. Thailand has a significant oversupply of electricity. According to EGAT, as of October 2022, Thailand's installed capacity was 49,154MW, while peak demand in 2022, which occurred in April, was 32,254MW.⁹ This means Thailand has a reserve margin of 16,900MW or 34%, which is more than double the international norm for reserve margin of 15%. To put it another way, 16,900 MW reserve margin is equivalent to more than 11 Luang Prabang dams.

It is clear that Thailand does not need to buy electricity from Luang Prabang and other Mekong mainstream dams to meet its energy security

objectives. Furthermore, the excessively high reserve margin places a burden on the Thai electricity consumers. Power Purchase Agreements in Thailand are negotiated on a take or pay basis, whereby EGAT pays the power plant operators regardless of whether the electricity is used or not. These costs are then passed onto Thai consumers in the form of fuel tariff (FT) charges.

In August 2020, when government-mandated lockdowns in response to COVID-19 pandemic were in full swing in Thailand, EGAT said that it planned to reduce the power generation capacity reserve from 40% to 15%. This decision was made after it became clear that the projected growth of electricity demand in the 2018 power development plan, which was done before COVID-19 outbreak, was unrealistic.¹⁰ A decision to sign the PPA with LPHPP would increase Thailand's electricity reserve margin even further, and directly contradict EGAT's own stated plan to reduce the reserve margin.

⁸ CK Power, 27 April 2022, Execution of the Tariff Memorandum of Understanding for the Luang Prabang Hydropower Project in Lao People's Democratic Republic: <https://ckp.listedcompany.com/newsroom/270420221747200893E.pdf>

⁹ Installed capacity figures: <https://www.egat.co.th/home/statistics-all-latest/> Peak demand figures: <https://www.egat.co.th/home/statistics-demand-latest/>

¹⁰ Bangkok Post, 20 August 2020, EGAT reining in power reserves: <https://www.bangkokpost.com/business/1971303/egat-reining-in-power-reserves>



2. Inadequate assessment of transboundary environmental impacts and risks

It is clear from the MRC Technical Review Report (MRC TRR), undertaken as part of the Prior Consultation process, that the LPHPP has not sufficiently assessed or addressed transboundary and cumulative impacts. As the MRC TRR notes, “One of the biggest concerns expressed by the review teams related to the extent to which the LPHPP developer had addressed the transboundary cumulative impacts.”¹¹

Some key gaps identified by MRC TRR include but are not limited to:

Sediment: While “the CIA-TBIA describes potential downstream impacts...in a general sense”, it “does not identify specific transboundary areas that will be susceptible to change.” There is no discussion of mitigation measures, such as sediment flushing, to reduce these transboundary impacts” (p.122-123)

Fisheries and aquatic ecology: “The LPHPP developer has not undertaken a rigorous transboundary and cumulative impact assessment...It is therefore recommended that a more robust transboundary impact assessment is carried out... This should include assessments of the social and economic impacts of disrupted migration, and assessment of the “no mitigation” scenario.” (p.123).

Transboundary socio-economic impacts: “The documentation provided does not address the potential transboundary socio-economic impacts, possibly because these were expected to be minor. The potential mitigation of these long-distance transboundary impacts is therefore also not addressed.” (p124)

Project financial viability: If properly implemented and resourced, measures to reduce transboundary impacts raise questions about the project’s financial viability: The MRC TRR notes that applying measures to reduce potential cumulative and transboundary impacts, some of which will reduce power output (and hence revenue) may “compromise the financial viability of individual HPPs [hydropower projects] without a commensurate increase in the price of the power or extension of the concession agreement.” (p.125).

Given major gaps in the consideration of potential transboundary and cumulative impacts of the Luang Prabang dam, the governments of Thailand, Cambodia and Vietnam all called for further studies on potential transboundary impacts in their formal reply forms submitted at the end of the Prior Consultation process.¹² Vietnam also called for the various studies and activities be undertaken prior to the “project’s ground-breaking”. Yet, despite CK

11 MRC (2022), MRC Technical Review Report: Prior Consultation for the Proposed Luang Prabang Hydropower Project, p.119: <https://www.mrcmekong.org/assets/Publications/TRR-of-LPHPP.pdf>

12 Formal reply forms from Cambodia, Thailand and Vietnam are available at: <https://www.mrcmekong.org/news-and-events/consultations/pnpca-prior-consultations/luang-prabang-hydropower-project/>

Also see MRC media release, 1 July 2020, Laos urged to better assess impacts, provide effective mitigation measures, as Luang Prabang dam moves forward: <https://www.mrcmekong.org/news-and-events/news/pr-luang-prabang-hpp-20200701/>

Power mentioning multiple times in its announcements to the Stock Exchange of Thailand that main construction is scheduled to start in January 2023, there is little evidence to demonstrate that further studies and actions have been undertaken to address the concerns raised by MRC member countries, civil society and communities and the recommendations of the MRC's Technical Review Report.

Furthermore, project developers should have learned ample lessons from the Xayaburi dam, the previous hydropower project that was developed by the same developer and which provides a model for the LPHPP. One of the key concerns from the Xayaburi PNPCA process was that transboundary impacts were not properly assessed; yet as the findings of the MRC TRR highlight, this pattern is being repeated for the Luang Prabang dam. Since the construction and operation of the Xayaburi dam, villagers living along the Mekong River in Thailand downstream of the dam have reported rapid and unusual fluctuations in water levels, changes in sediment as evident in the changing colour of the river, increased river bank erosion, declines in fish diversity and abundance, which in turn has had significant impacts on community livelihoods and incomes. The observations are supported by some of the preliminary findings of the MRC Joint Environmental Monitoring Report, which notes, among other things, substantial reductions in sediment concentrations and loads downstream of Xayaburi at Chiang Khan and Nong Khai since 2018, and a sharp reduction in fisheries biodiversity, of 40 to 60%, at all monitored sites around Xayaburi dam.¹³

3. Earthquake and dam safety risks

Luang Prabang Hydropower Project is located only 8.6km from an active fault line. Prof. Dr. Punya Churasiri, an emeritus associate geology professor at Chulalongkorn University said “I am deeply concerned that earthquakes may happen and there is a possibility of damage to World Heritage sites, therefore Luang Prabang Hydropower has a high earthquake risk”.¹⁴

Given the LPHPP's impoundment volume, dam height and proximity to Luang Prabang town, the dam is also classified as “extreme risk”, according to the Lao Electric Power Standards (LEPTS 2018). The MRC TRR further notes that, “Dam safety, flood management and notifications to downstream communities are matters of extreme importance for any major dam development. The potential to impact a UNESCO World Heritage site further emphasises the need to adopt the very highest standards of dam safety for this project.”¹⁵ Yet, at the time of the Prior Consultation process, the LPHPP design was not compliant with LEPTS 2018.

Addressing dam safety concerns was a key issue highlighted in the Joint Statement issued at the end of the LPHPP Prior Consultation Process. The statement included calls to establish an independent dam safety review panel; adjust the dam design to comply with national standards (e.g. LEPTS 2018) and international good practice; and develop an emergency preparedness plan before construction.¹⁶ However, more than two years later, it remains unclear whether and how these measures have or will be implemented, including ensuring that the dam design is compliant with LEPTS 2018. No substantive update has been publicly disclosed by the developer or the Lao government since the conclusion of the Prior Consultation process.

¹³ MRC (2022), Joint Environmental Monitoring Programme at two Mekong mainstream dams: The Don Sahong and Xayaburi hydropower projects, p. 2-3: <https://www.mrcmekong.org/assets/Publications/JEMPILOT2022.pdf>

¹⁴ Fawthrop, T. 30 June, 2020, Luang Prabang Threatened by Proposed Dam, Asia Sentinel: <https://www.asiasentinel.com/p/luang-prabang-threatened-by-proposed>

¹⁵ MRC (2022), MRC Technical Review Report: Prior Consultation for the Proposed Luang Prabang Hydropower Project, p.100: <https://www.mrcmekong.org/assets/Publications/TRR-of-LPHPP.pdf>

¹⁶ MRC, 30 June 2020, Statement on the Prior Consultation Process for the Luang Prabang Hydropower Project in Lao PDR, p.3: <https://www.mrcmekong.org/assets/Publications/MRC-Statement-on-PC-for-Luang-Prabang.pdf>

4. Risks to Luang Prabang World Heritage site

In 1995, Luang Prabang, the old royal capital, became the first World Heritage site in Laos. According to Heritage specialist, Minja Yang, “UNESCO signed the 1995 Agreement with the Lao government based on the unique links between nature, culture, and history along the confluence of the Mekong and Khan rivers.”¹⁷

In 2012, concerned about the potential adverse impacts the proposed Luang Prabang dam would have on the World Heritage site’s outstanding values, the World Heritage Committee (WHC) requested the Government of Laos to undertake and submit a heritage impact assessment (HIA). Yet, there was no progress, until in 2021, when the WHC recommended that the Lao government halt all construction activities until an HIA is conducted and submitted for review by advisory bodies.

In November 2021, nine years after the WHC originally requested an HIA be undertaken, the Lao

government submitted a final draft of the HIA for review. While the HIA and the review report is not yet publicly disclosed, it’s clear from the findings of the World Heritage Centre/ICOMOS Joint Mission Report, that the impacts and risks to Luang Prabang town have not been sufficiently assessed. The report’s key recommendation in relation to LPHPP states:

“In the underlying situation where the previous studies and the HIA have not provided satisfactory analysis and solid proof and certainty that the LPHPP upstream will not further affect the attributes of the OUV relating to the natural environment of the Mekong and Nam Khan Rivers, associated religious and cultural practices and living conditions of local communities, take the precautionary approach not to pursuing the LPHPP and relocate the project and other future and similar projects to where there is no suspected causality for the World Heritage properties, their associated values or their environmental setting.”¹⁸



¹⁷ Fawthrop, T., 23 December 2020, Hydropower vs Heritage: Will Laos Lose Luang Prabang? The Diplomat: <https://thediplomat.com/2020/12/hydropower-vs-heritage-will-laos-lose-luang-prabang/>

¹⁸ Report on the Joint World Heritage Centre/ICOMOS Mission to the “Town of Luang Prabang” (Lao PDR), 4-9 April 2022: <https://whc.unesco.org/en/list/479/documents/>

5. Forced relocation and livelihood concerns

As of 30 November 2022, the Power Purchase Agreement has not yet been signed. However, media reports indicate that LPCL and the Lao government have already started to relocate 74 families in Huay Yor village to a new resettlement site.¹⁹ The resettlement plan is based on the same model used for the Xayaburi dam: company builds new houses, temple, community hall, market, and school for the new village, without providing sufficient agricultural land to ensure that villagers can continue their livelihoods. Some resettled villagers expressed concern that they would not have enough land to farm after losing original agricultural lands to the Luang Prabang dam, and the new land provided is also far away (10km) from the new village.

According to the project's Social Impact Assessment report, a total of 2,885 villagers from six villages would have to be completely relocated.²⁰ From the way it is being implemented in Huay Yor village, the resettlement program does not appear to have measures to consult with or seek prior consent from affected villagers and therefore the resettlement may constitute "forced relocation" with risks of human rights abuses.

6. Inadequate human rights risk assessment

Despite significant ESG risks of LPHPP described above, CK Power which is the key project sponsor, still seems to remain ignorant or dismissive of these risks, at least in its public disclosure.

For example, CK Power states on its website that it established human rights policy "to declare its intent to uphold human rights in its business operations in accordance with the United Nations Framework and Guiding Principles across the value chain, encompassing CK Power and its subsidiaries,



suppliers, related businesses (such as joint ventures), rights holders, and vulnerable groups."²¹ However, CK Power's 2021 Summary Human Rights report, which presents its approach to – and the results of its – human rights risk assessment, identified "employee health and safety" as the only "salient risk issue," in its operational sites, including Xayaburi dam.²² This is despite the wealth of publicly available information and reports, pointing to the very serious environmental and social impacts of Xayaburi dam.

CK Power's Human Rights Policy also states its commitment to conduct "human rights due diligence as part of the policy implementation," noting that it's an on-going process.²³ Yet, there is no evidence in project documents disclosed to date that CK Power has undertaken a meaningful human rights risk assessment for the LPHPP. If a human rights risk assessment was undertaken, this should be publicly disclosed as per Step 4 of CK Power's Human Rights Due Diligence, Track and Communicate Performance. Instead, CK Power's 2021 Summary Human Rights report makes no reference to Luang Prabang dam, let alone key ESG and human rights risks we have identified above, including but not limited to, transboundary environmental and social impacts, potential forced relocation, and adverse impacts on the rights to food and livelihoods of affected communities.

19 Radio Free Asia, 9 November 2022, The villagers of Huai Yao moved to the new village of the Luang Prabang Dam project <https://www.rfa.org/lao/daily/environment/about-74-families-displaced-by-luang-prabang-dam-project-move-to-resettlement-village-11092022204607.html>

20 LPCL, 10 May, 2019, Lung Prabang HPP Environmental and Social Impact Assessment, Report 2 of 5 – Social Impact Assessment, p.12: <https://www.mrcmekong.org/news-and-events/consultations/pnpca-prior-consultations/luang-prabang-hydropower-project/>

21 <https://www.ckpower.co.th/en/sustainability/stakeholder-engagement/human-rights>

22 CK Power (2022) 2021 Summary Human Rights Report: CKP Human Rights Due Diligence and Human Rights Risk Assessment: <https://www.ckpower.co.th/storage/content/sustainability/management-process/2022/human-rights/20220119-ckp-human-right-summary-report-2022.pdf>

23 CK Power, Human Rights Policy: <https://www.ckpower.co.th/storage/content/sustainability/management-process/2022/human-rights/human-rights-policy-en.pdf>



“Responsible Lending”: Key commitments by Thai Banks

As described above, the LPHPP poses significant Environmental, Social and Governance (ESG) risks. This project is therefore a timely “test case” for the application of “Sustainable Banking Guidelines - Responsible Lending”, which 15 Thai financial institutions signed in 2019.²⁴ The Guidelines define “minimum expectations on responsible lending practices for all banks based in Thailand” and provides guidance for banks “to establish a responsible lending strategy to manage their environmental and social (E&S) risks and impacts.”²⁵ The guidelines identify four “foundational elements” which should inform banks’ responsible lending strategy and practices. These include:

1. Leadership and responsible lending:

Establish commitment from the Board of Directors, CEO and Senior Management to implement a responsible lending strategy; define and communicate the responsible lending strategy to internal and external stakeholders.

2. Stakeholder engagement:

Engage with stakeholders to determine “material ESG risks” and assess potential adverse impacts related to lending activities. The Guidelines also recommend that “banks should consider concerns of and connect with parties who may be directly and indirectly affected by activities that banks finance in cases where negative impacts are demonstrably material and significant.”

3. Internal implementation mechanisms:

Banks need to develop internal policies and processes to address key ESG risks in lending activities; engage with clients to “proactively support them in reducing negative impacts and improving their sustainability performance;” and dedicate resources and build capacity for both senior management and staff on ESG and sustainability matters.

4. Transparency:

Banks should publish any progress made on implementing the guidelines by “disclosing information on the measures taken or the impacts achieved.”

More recently, on 29 August 2022, the Thai Bankers’ Association (TBA) issued an ESG declaration which builds on the Guidelines and outlines TBA members’ priorities to address key emerging ESG risks in relation to “climate change, diversity and human rights, financial inclusion and reduced inequalities.”²⁶ This includes developing a handbook to specify details of subsequent actions, timelines and key performance indicators for each ESG component. Fair Finance Thailand hopes that the ESG declaration will work towards addressing major gaps in the 2019 Guidelines, which lacked substantive guidance and concrete timebound commitments and actions, indicating when and how the banks will translate the Guidelines into practice.²⁷

²⁴ The Thai Bankers’ Association, 13 August 2019, Sustainable Banking Guidelines: Responsible Lending by The Thai Bankers’ Association: <https://www.tba.or.th/wp-content/uploads/2019/08/Guidelines-ResponsibleLending.pdf><https://www.tba.or.th/wp-content/uploads/2019/08/Guidelines-ResponsibleLending.pdf>

²⁵ Ibid, p.1.

²⁶ Joint Press Release: TBA launches ESG Declaration, a strong collective commitment to expediting sustainable development toward better and greener economy, 29 August 2022: <https://www.bot.or.th/landscape/en/news/2022/08/29/esg-declaration/>

²⁷ See Fair Finance Thailand (2019). *Challenges of Financing Dam Projects for Thai Banks: The Case of Xayaburi and XPXN Projects*, for an analysis of the Responsible Lending Guidelines and why Thai banks must integrate environmental, social and governance risks into their lending decisions and conduct human rights due diligence in line with international standards: <https://fairfinancethailand.org/media/495434/challenges-of-dam-financing-for-thai-bank-the-case-of-xayaburi-and-xpxn-projects.pdf>

Translating “Responsible Lending” commitments into practice?

As of 1 December 2022, signatory banks are at different stages of designing and implementing responsible lending strategies as per the TBA Guidelines. Bank of Thailand has also been encouraging Thai banks to engage more directly with affected stakeholders.

With regards to LPHPP, in September 2020, Bank of Thailand invited representatives of Fair Finance Thailand and Thai Mekong People’s Network to discuss ESG risks and concerns over Luang Prabang dam directly with representatives from 10 Thai banks that were considering to finance the project.²⁸ The meeting marked the first time in Thailand that bankers discussed concerns over a hydropower project directly with affected stakeholders.

However, our review of responsible lending policies of major project finance lenders in Thailand has since found that most banks still do not explicitly mention significant ESG risks from large hydropower projects, nor outline clear ESG risk management or screening criteria for such projects. Of the six Thai banks that financed the Xayaburi dam, only two banks – Siam Commercial Bank (SCB) and Kasikornbank – have issued lending policies and/or guidelines that specifically mention dams or hydropower projects (See Box 1 and 2). However, as the example of SCB shows, having a policy or guideline is not necessarily sufficient to comprehensively assess and address risks of large-scale hydropower projects like LPHPP. Such projects produce risks that are extensive and complex because they severely impact on the ecological health of the Mekong River system which sustains food security, livelihoods and local economies for millions of people across six countries.

It is still unclear if Thai commercial banks will lend to the Luang Prabang dam. If they do, current policies are inadequate to address the extensive social and environmental risks, considering that these banks have yet to adopt international standards related to hydropower. In comparison, Standard Chartered and HSBC, two major global banks, provide a clearer position with reference to international standards and guidelines related to hydropower. For example, HSBC’s energy policy²⁹ clearly states that it will **not** fund new large dams that are inconsistent with the World Commission on Dams (WCD) Decision Making-Framework, which established comprehensive guidelines for dam building through an extensive multi-stakeholder process.³⁰ Similarly, Standard Chartered’s Position Statement on Energy states that it expects hydropower clients to follow the WCD Framework on Decision Making. Of relevance to LPHPP are both bank’s commitment to also not finance projects that adversely impact on World Heritage sites. Although some Thai banks also have policies that consider the heritage status of locations close to project sites, it is unclear whether these policies will be strictly adhered to when considering the financing of the Luang Prabang dam.

On 9 February 2021, Fair Finance Thailand sent an open letter to Bank of Thailand, Thai Bankers’ Association, and six banks that earlier financed Xayaburi hydropower project, asking all banks to specifically include “hydropower projects built on the mainstem of the Mekong River” in their Exclusion List.³¹ As of 1 December 2022, the coalition has yet to receive a response.

²⁸ Sarakadee Magazine, 27 October 2020, Bank of Thailand invited People’s Network of 8 Mekong-bordered Provinces to explain why 6 banks should not finance Luang Prabang Hydropower Project: <https://www.sarakadee.com/2020/10/27/สวทเชิญธนาคารแห่งประเทศไทย/>

²⁹ HSBC Energy Policy: <https://www.hsbc.com/who-we-are/esg-and-responsible-business/managing-risk/sustainability-risk>

³⁰ WCD developed a decision-making framework based on recognition of rights and assessment of risks. WCD put forward seven strategic priorities based on a set of policy principles, and 26 guidelines for good practice that lay out actions to comply with the strategic priorities. See: https://archive.internationalrivers.org/sites/default/files/attached-files/world_commission_on_dams_final_report.pdf

³¹ Fair Finance Thailand, 9 February 2021, Statement Calling for Banks to Make a Public Stance on Luang Prabang Hydropower Project, and to Add “Hydropower Projects in Mainstem Mekong River” to their Exclusion List, retrieved from <https://fairfinancethailand.org/news/2021/letter-for-thai-bank-on-luang-prabang-dam/>



Box 1 : Siam Commercial Bank and hydropower

Siam Commercial Bank (“SCB”) is the first and only Thai bank that signed onto the Equator Principles (EP), becoming a member in January 2022. The Equator Principles are an international risk management framework adopted by financial institutions to determine, assess and manage environmental and social risk in projects. They aim to provide a minimum standard for due diligence and monitoring to support responsible decision-making. As early as 2018, SCB stated in their Responsible Lending Factsheet that “SCB has engaged with both internal and external stakeholders through a series of consultation[s] to understand their expectation for the programme development. The principles and elements of Equator Principles and IFC Performance Standards are also applied as appropriate, by considering the market and industry practices.”³²

SCB has established and publicised guidelines for the consideration of granting credit for four specific sectors: alternative energy, dams, infrastructure, and thermal power plants.³³ The guidelines for dams apply to dam projects with a reservoir of 100 million cubic meters, or 15 square kilometres or greater. The guideline identifies three risks, including: loss of natural habitat, loss of communal space and lack of community acceptance. Mitigation measures revolve around preparing an impact assessment, preparing a relocation plan for communities and conducting at least one community consultation with local communities, to convey project information, listen to concerns, and propose mitigation measures.

Despite these steps in the right direction, SCB’s measures are still inadequate to actually address the risks and impacts related to large-scale hydropower projects like LPHPP. In particular, there is no reference to the scope, quality and process of impact assessments, including transboundary and cumulative impacts; minimum standards to ensure people resettled are meaningfully consulted and are not made worse off as a result of resettlement; and ensuring meaningful consultations with all potentially affected stakeholders.

There is a real need for SCB to update its sector-specific guidelines related to dams, which at the very least should be in line with Equator Principles. In announcing that it had signed onto the Equator Principles (EP), SCB noted that it has made “adjustment and improvement of credit policies and processes in line with the EPs.”³⁴ However, this is not evident in SCB sector-specific guidelines for dams.

³² SCB Responsible Lending Fact Sheet, 18 May 2018: https://www.scb.co.th/content/dam/scb/about-us/sustainability/documents/responsible-lending-factsheet.pdf?link_id=th_scb

³³ Siam Commercial Bank, 21 May 2018. *Sector-Specific Lending Guidelines*. <https://www.scb.co.th/content/dam/scb/about-us/sustainability/documents/sector-specific-guide-th.pdf>

³⁴ Siam Commercial Bank, 31 January 2022, SCB first Thai bank named a signatory to the Equator Principles, adoption of a global practice to promote sustainable finance, <https://www.scb.co.th/en/about-us/news/jan-2022/scb-equator-principles.html>

BOX 2 : Kasikornbank credit policy and hydropower

Kasikornbank (KBank) was the first Thai bank to sign onto the UN Principles for Responsible Banking, where signatories commit to take actions to align their strategies, decision-making and lending and investment in line with UN Sustainable Development Goals and international agreements, such as the Paris Agreement (see Annex 2: Select international initiatives, standards and guidelines covering ESG risk management in the financial sector)³⁵

KBank has established an exclusion list (i.e. projects and activities it will not lend to) as part of its “Credit Policy on Environment, Social, Governance and Sector-Specific Guidelines”³⁶ While KBank has not publicly disclosed its sector-specific policy for hydropower projects, the aforementioned ESG credit policy mentions that the bank will not support “Hydropower plants from dams without management measures and work plans in accordance with the Equator Principles, and without support from international financial institutions for development or foreign financial institutions.” It is worth noting that following the publication of the 2010 Strategic Environmental Assessment of the Lower Mekong Mainstream Hydropower projects, which recommended a ten-year moratorium on mainstream dams, the World Bank Group, which includes the IFC, announced that “it will not finance and has no plans to invest in hydro projects on the mainstream of the Mekong.”³⁷

Projects and activities identified on KBank’s exclusion list indicate that the bank would not finance LPHPP. These include:

- Activities and projects that destroy or encroach upon important ecosystems and cultural areas, such as UNESCO World Heritage Sites;
- “[P]rojects in foreign countries that may create extensive environmental and social impacts, and do not comply with the host countries’ environmental requirements or those of related national agencies, as well as other globally accepted standards, such as the Equator Principle, IFC Performance Standards...”; and
- “Credits for dam projects, which have significant adverse effects on the environment and society, that have neither management measures nor action plans in accordance with the Equator Principles, nor support from multilateral development banks (MDBs) or international banks”

As noted in earlier sections, due to concerns about inadequate assessments of the potential impacts of LPHPP on the Luang Prabang World Heritage site, the Joint World Heritage Centre/ICOMOS Monitoring Mission Report recommended not to pursue the project and to relocate the project and other future similar projects. Likewise, the MRC Technical Review Report highlights many gaps in the assessment of and measures to address transboundary impacts of LPHPP. Thus, LPHPP would not pass KBank’s screening and as per its Credit Policy, LPHPP should be on KBank’s Exclusion List.

³⁵ As of 1 December 2022, three Thai banks have signed onto the UN Principles for Responsible Banking: Kasikorn (February 2020); Government Savings Bank (December 2020); Bank of Ayudhaya (June 2022): <https://www.unepfi.org/banking/prbsignatories/>

³⁶ Kasikornbank (n.d) Credit Policy on Environment, Social and Governance and Sector-Specific Guidelines: <https://www.kasikornbank.com/EN/TR/CorporateGovernance/transparency/pages/esg-credit-policy.aspx>

³⁷ World Bank, 22 October 2010, Media Release: World Bank Group Welcomes Strategic Environmental Assessment of Mekong Mainstream Dams: <https://www.worldbank.org/en/news/press-release/2010/10/22/world-bank-group-welcomes-strategic-environmental-assessment-mekong-mainstream-dams>



Conclusion

Hydropower financing in the Mekong has been the staple of Laos and many banks, particularly large Thai lenders. However, this brief shows that the financing of large dams in Mekong mainstream is an increasingly risky endeavour, and the existing credit policies of Thai lenders who have traditionally financed dams in the region are inadequate to accurately assess the risks of upcoming projects.

The Luang Prabang Hydropower Project is mired in uncertainties and risks. The project is modelled on the Xayaburi dam, an earlier project by the same group of developers that was financed 100% by Thai banks and has the same major sponsor as LPHPP. However, the same group of developers do not seem to have applied lessons learned from Xayaburi. The MRC Technical Review Report stated specifically that the LPHPP has not sufficiently assessed and addressed transboundary and cumulative impacts. Villagers from the first village relocated are concerned about their livelihood, similar to the concerns voiced by villagers relocated from Xayaburi.

Additionally, the LPHPP has the potential to adversely impact the Luang Prabang World Heritage

site, which has resulted in the World Heritage Centre/ICOMOS recommending that the project not be pursued in their April 2022 Joint Mission Report. Key issues and concerns raised during the LPHPP Prior Consultation process, including calls for more in-depth studies especially on transboundary and cumulative impacts, remain largely unaddressed. In light of these risks, it is time for Thai banks that have been traditional lenders to hydropower projects in the Mekong to reconsider their strategy toward Laos. At the very least, the banks should strengthen their credit policies with regards to hydropower to the level of international standards as many global banks such as HSBC and Standard Chartered have done, making specific reference to the World Commission on Dams. Otherwise, any lender which decides to finance LPHPP will risk being a party to the destruction of one of the world's most important river ecosystems, threatening the livelihoods of more than 65 million people in the basin who depend on the Mekong. That lender will also risk being seen to act in contravention of the Responsible Lending guidelines, as well as their own touted ESG risk management process.

What is the PNPCA?



The Procedures for Notification, Prior Consultation and Agreement (PNPCA) are derived from Article 5 of the 1995 Mekong Agreement, in which parties agree to the reasonable and equitable use for the Mekong River System. The PNPCA specifies three distinct forms of inter-governmental communication, depending on type and location of project:

- 1. Notification**, which is applicable to projects on tributaries and for wet season use of the Mekong River mainstream. For example, this would apply to projects such as the Lower Sesan 2 dam in Cambodia and the Yali Falls dam in Vietnam.
- 2. Prior Consultation**, which is applicable to dry season use on the Mekong mainstream. Thus, all Lower Mekong mainstream dams are subject to Prior Consultation.
- 3. Agreement**, which is applicable to inter-basin diversions from the mainstream, requires a specific agreement be reached among countries.

According to the 1995 Agreement, Prior Consultation means “Timely notification plus additional data and information to the Joint Committee” and it is “neither a right to veto the use nor a unilateral right to use water by any riparian without taking into consideration other riparians’ rights.” According to the PNPCA, the timeframe for Prior Consultation is six months from the date of formal receipt of relevant documents, with the possibility of extending the period pending a decision by the Joint Committee.

As of 1 December 2022, six Lower Mekong mainstream dams have undergone the Prior Consultation process – Xayaburi, Don Shaong, Pak Beng, Pak Lay, Luang Prabang and Sanakham dams. The process has been contested by a range of stakeholders who have raised questions and concerns related to the quality of information, impact assessments and other project documents submitted, lack of meaningful participation of affected communities and civil society, concerns over impacts and requests for further studies. These concerns, raised by both civil society and member countries, have remained largely unaddressed. While MRC has taken some steps to review and improve Prior Consultation process, gaps remain. This is evident in the most recent MRC Joint Development Partner Statement, issued on 24 November 2022, which called for further strengthening of the PNPCA process for dams on the mainstream and tributaries. The Statement urges MRC to “ensure a high-quality process with sufficient and timely information sharing, involving stakeholders, including civil society.”³⁸

³⁸ Statement of the Development Partners on the occasion of the 29th Council Meeting of the Mekong River Commission (MRC), 24 November 2022

Annex 2 :

Select international initiatives, standards and guidelines covering ESG risk management in the financial ³⁹

Initiatives Standards, Guidelines	Description
UN Environmental Program (UNEP) Finance Initiative (FI) ⁴⁰	Launched in 1992, UNEP FI is a global partnership between United Nations Environment Program and the financial sector to promote sustainable finance. Over 400 institutions, including banks, insurers and fund managers, work with UNEP to understand the impacts of environmental and social considerations on financial performance.
Equator Principles (EP) ⁴¹	A risk management framework adopted by financial institutions to determine, assess and manage environmental and social risk in projects. The EP reference the IFC's Environmental and Social Performance Standards and aim to provide a minimum standard for due diligence and monitoring to support responsible decision-making. Currently 136 financial institutions have officially adopted EP.
IFC Environmental and Social Performance Standards ⁴²	The Performance Standards (PS) apply to clients of the International Finance Corporation (companies that have secured IFC financing for a project). The eight standards establish responsibilities that client must meet 'throughout the life of an investment'. The current version of PS (2012) are supported by Guidance Notes, which provide further guidance on PS requirements. ⁴³
UN Principles for Responsible Banking (PRB) ⁴⁴	Launched in September 2019, PRB outlines six principles under which adopting banks commit to aligning "business strategy to be consistent with and contribute to individuals' needs and society's goals, as expressed in the Sustainable Development Goals, the Paris Climate Agreement and relevant national and regional frameworks." ⁴⁵
UN Principles on Responsible Investment (UNPRI) ⁴⁶	Developed by a group of international institutional investors, the UNPRI sits alongside UN Global Compact. Launched in 2017, UNPRI assists investors to better incorporate Environmental, Social and Governance (ESG) issues into investment practices. UNPRI see that ESG issues impact investment portfolios over time, so they must be incorporated in order for investors' fiduciary responsibilities to be met. In January 2022, UNEP FI and PRI officially merged the UNEP FI Investment membership with PRI's Signatory base.

³⁹ Sourced and updated from Fair Finance Thailand (2019), Challenges of Financing Dam Projects for Thai Banks: The Case of Xayaburi and XPXN Projects, Table 1, p.9. <https://fairfinancethailand.org/media/495434/challenges-of-dam-financing-for-thai-bank-the-case-of-xayaburi-and-xpxn-projects.pdf>

⁴⁰ See: <https://www.unepfi.org/>

⁴¹ See: <https://equator-principles.com/>

⁴² Available at: https://www.ifc.org/wps/wcm/connect/24e6bfc3-5de3-444d-be9b-226188c95454/PS_English_2012_Full-Documents.pdf?MOD=AJPERES&CVID=jkV-X6h

⁴³ Available at: https://www.ifc.org/wps/wcm/connect/9fc3aaef-14c3-4489-acf1-a1c43d7f86ec/GN_English_2012_Full-Documents_updated_June-27-2019.pdf?MOD=AJPERES&CVID=mKqIToj

⁴⁴ See: <https://www.unepfi.org/banking/bankingprinciples/>

⁴⁵ UNEP Finance Initiative (2019), Principles for Responsible Banking. <https://www.unepfi.org/wordpress/wp-content/uploads/2019/07/FINAL-PRB-Signature-Documents-2-Interactive-22-07-19.pdf>

⁴⁶ See: <https://www.unpri.org/pri>

Initiatives Standards, Guidelines	Description
<p>UN Guiding Principles on Business and Human Rights (UNGPs)⁴⁷</p>	<p>The leading global framework for business and human rights, endorsed by the UN Human Rights Council in 2011, is based on three pillars: ‘Protect, Respect, Remedy’. These refer to the duty of states to protect human rights from abuses by third parties, including companies; companies must respect human rights; and ensuring access to effective remedy when human rights have been violated.</p> <p>The UNGPs apply to all companies, including state-owned and commercial banks and other entities in the financial sector. To avoid and address adverse human rights impacts, banks should develop a human rights policy; undertake due diligence to assess actual and potential human rights impacts; and ensure remedy for impacts that they have caused or contributed to.⁴⁸ The Office of the High Commissioner on Human Rights has issued guidance on the application of the UNGPs to the banking sector.⁴⁹</p> <p>The UNGPs have been incorporated in updates to the Equator Principles, IFC Performance Standards, and the OECD Guidelines on Multinational Enterprises.</p>
<p>OECD Guidelines for Multinational Enterprises (MNEs) 2011 Update⁵⁰</p>	<p>Guidelines apply to governments and MNEs, including banks, in all 38 OECD countries and 12 non-OECD countries (that have agreed to adhere to them). They are binding on governments but non-binding on MNEs. Complaints relating to breaches of the Guidelines can be made to National Contact Points (NCP), which are created by all adhering states.</p> <p>The OECD has developed further guidance on how the OECD Guidelines apply to the financial sector. In 2017, OECD released a “Responsible Business Conduct for Institutional Investors” guide.⁵¹ In October 2019, the OECD published “Due Diligence for Responsible Corporate Lending and Securities Underwriting”, which aims to provide a common global framework for financial institutions to identify, respond to and publicly communicate on environmental and social risks associated with their clients.⁵²</p>
<p>Task Force on Climate-related Financial disclosure⁵³</p>	<p>An industry-led initiative established in 2015 to develop voluntary, consistent climate-related financial risk disclosures for use by companies, banks, and investors in providing information to stakeholders.</p>

47 Available at: https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

48 UNEP FI and Foley Hoag LLP (2015) Banks and Human Rights: A Legal Analysis, December 2015. Available at: <https://www.unepfi.org/fileadmin/documents/BanksandHumanRights.pdf>; Also see: <https://www.ohchr.org/Documents/Issues/Business/InterpretationGuidingPrinciples.pdf>

49 OHCHR, Response to request from BankTrack for advice regarding the application of the UN Guiding Principles on Business and Human Rights in the context of the banking sector. Available at: <https://www.ohchr.org/Documents/Issues/Business/InterpretationGuidingPrinciples.pdf>.

50 Available at: <https://www.oecd.org/daf/inv/mne/48004323.pdf>

51 Trandem, A. (2019) Offloading Risks & Avoiding Liabilities: How Financial Institutions Consider Hydropower Risks in Laos, p.17.

52 Available at: <https://mneguidelines.oecd.org/Due-Diligence-for-Responsible-Corporate-Lending-and-Securities-Underwriting.pdf>.

53 See: <https://www.fsb-tcfd.org>



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About Fair Finance Thailand:

Founded in 2018, members of Fair Finance Thailand coalition (FFT, website www.fairfinancethailand.org) include one research company and four CSOs — Sal Forest Co., Ltd., Foundation for Consumers, ENLAW Foundation, International Rivers and Ecological Alert and Recovery - Thailand (EARTH). FFT members have been monitoring impacts and sustainability challenges of Thai financial institutions, and aim to advocate genuine adoption of the concept and best practices of sustainable banking. FFT utilizes Fair Finance Guide International (www.fairfinanceguide.org) methodology in its annual assessment of disclosed policies of largest Thai financial institutions, starting in 2019.