2. Legal, Institutional, and Governance Context

2.1 National Policy, Regulatory, and Institutional Frameworks

The government of Lao PDR has strengthened the policy and regulatory framework governing the renewable energy sector in recent years.

2.1.1 Environmental Protection Law (Revised 2013)

The Environmental Protection Law defines principles, regulations, and measures related to environmental management, including monitoring of protection, control, preservation, rehabilitation, and mitigation of impacts created naturally or by anthropogenic loads. The law aims to balance the needs of society and nature by sustaining and protecting natural resources, maintaining public health, contributing to national socio-economic development, and reducing global warming. The law stipulates requirements for basin planning, which implicitly requires consideration of cumulative effects of different water uses within a basin, supporting the use of the cumulative impact assessment (CIA).

2.1.2 Ministerial Instruction on Environmental and Social Impact Assessments (2013)

The 2013 *Ministerial Instruction on ESIA* outlines the conditions that require a CIA in addition to the standard environmental and social impact assessment. In practice, however, CIA implementation in Lao PDR has been limited. To conduct a CIA, project developers require substantial information about nearby existing and planned developments, and it is not usually readily available.

2.1.3 Policy on Sustainable Hydropower Development in Lao PDR (2015)

The Lao PDR Policy on Sustainable Hydropower Development (MEM 2015) emphasizes sustainable planning principles throughout the project lifecycle. Principles of water resource management, watershed management, and conservation are embedded in the policy, which calls for application of the mitigation hierarchy (anticipate, avoid, minimize, and compensate) as follows:

> Natural conserved habitat area losses caused by hydropower development projects shall be avoided and mitigated as much as possible. Where avoidance is not possible, the project developers must compensate for and restore lost habitats and provide funding to help manage and effectively conserve the watershed area, nearby watersheds, and other important conservation areas . . . [and] must also develop a sustainable biodiversity management plan, consider compensation, or help mitigate the impact on the local natural resources base (paragraph 5.11).

The policy also outlines revenue and benefit sharing principles.

2.1.4 Revised Law on Electricity (2018)

Under the revised Law on Electricity,[7] a comprehensive environmental and social impact assessment (ESIA) must be conducted for all developments larger than 5 MW; a less rigorous initial environmental examination must be completed for smaller developments.

Article 10 of the revised law covers integrated power sector planning and is of special relevance for this CIA and the Sekong Basin Co-Management Platform. It states:

> MEM [Ministry of Energy and Mines] shall develop an integrated power sector plan at least once every five years in consultation with other sectors such as planning and investment, finance, natural resources and environment, agriculture, and forestry. The integrated power sector plan shall, among other things, identify and prioritize projects based on criteria including . . . adherence to the principles of integrated water resources management consistent with the laws and regulations governing water resources management.

[7] The original 1994 Law on Electricity was amended in 2008, 2011, and 2017.

2.1.5 Dam Safety Review

The government of Lao PDR has initiated a national dam safety review of existing and planned dams with the assistance of the World Bank and several other development partners. Work started in 2019 and will continue through 2020. A number of internationally funded expert advisers are assisting the Ministry of Energy and Mines with this review, and it is understood that no construction will continue unless a dam in question is found to meet the safety criteria established in this review.

2.2 Transnational Basin Governance

2.2.1 Overview

The following transnational governance instruments and bodies are relevant to this CIA:

- Mekong 1995 Agreement
- Mekong River Commission (MRC) procedures
- MRC Basin development strategy, strategic plans, and other initiatives
- National environmental impact assessment (EIA) regulations

2.2.2 Mekong 1995 Agreement

Cambodia, Lao PDR, Thailand, and Vietnam signed the Agreement on Cooperation for Sustainable Development of the Mekong River Basin on April 5, 1995. This agreement defines a set of principles and processes for pursuing a coherent regional strategy of integrated water resources management.

The agreement encourages cooperation among the Lower Mekong Basin countries to optimize the multiple uses and mutual benefits of Mekong River resources for all riparian countries while protecting the environmental and ecological balance in the basin. The 1995 agreement addresses different types of water use, including hydropower.

The vision of the Mekong 1995 agreement is for member states "to cooperate in a constructive and mutually beneficial manner for sustainable development, use, conservation, and management of the Mekong River Basin water and related resources" (MRC 1995).

2.2.3 Mekong River Commission Procedures

Five procedures were adopted for implementation in the framework of the Mekong 1995 Agreement:

1. Procedures for Notification, Prior Consultation, and Agreement (2003)
2. Procedures for Data and Information Exchange and Sharing (2001)
3. Procedures for Water Use Monitoring (2003)
4. Procedures for Maintenance Flows on the Mainstream (2006)
5. Procedures for Water Quality (2011)

These procedures are applicable to the Sekong River Basin CIA and management of renewable energy development in the basin. According to the Procedures for Notification, Prior Consultation, and Agreement, hydropower development on tributaries is subject to notification to the MRC Joint Committee, and development on the mainstream requires prior consultation among the countries. Notification requires that a country report the details of a project to the other member countries through the MRC Joint Committee before project implementation begins. The 1995 agreement also requires the countries to "make every effort to avoid, minimize, and mitigate harmful effects" (MRC 1995); in other words, to adopt the mitigation hierarchy in the planning and implementation of hydropower and other infrastructure projects.

2.2.4 MRC Basin Development Strategy, Strategic Plans, and Other Initiatives

Member countries endorsed the MRC Strategic Plan (2011–15) and the Basin Development Strategy for the Lower Mekong Basin in January 2011, which was an important step toward regional cooperation on sustainable basin-wide development, as envisaged in the 1995 agreement. The MRC Strategic Plan and the Basin Development Strategy were updated for 2016 to 2020 (MRC 2016a, 2016b). These strategies underline a growing sense of urgency among stakeholders for the need to move basin development toward sustainable outcomes that address long-term needs, including environmental protection and water, food, and energy security.

Between 2015 and 2018, MRC developed the Hydropower Mitigation Guidelines (MRC 2019a), intended as a technical guide for mitigation of risks and impacts of mainstream and tributary development in the Mekong River Basin. Central principles are the use of the mitigation hierarchy throughout a project life cycle and of basin-wide mitigation techniques (as opposed to project by project techniques) to address the risks and impacts of hydropower development. Avoidance of risk and impact in terms of planning, siting, and alternative designs of hydropower projects is highlighted in these guidelines. It may include alternative locations for projects, project design scales (for example, smaller dams), and alternative energy sources.

In 2018, MRC initiated a sustainable hydropower development strategy that considers alternative hydropower development pathways with various trade-offs among economic, social, and environmental factors. The intention is to promote balanced basin development among Lower Mekong Basin member countries. The strategy will generate input for the 2021–25 basin development plan (MRC 2019b).

MRC has developed a framework for transboundary environmental impact assessments (EIAs) to supplement existing cooperation according to the Procedures for Notification, Prior Consultation, and Agreement. A specific focus is to better understand conflict resolution in transboundary environmental matters and environmental considerations for sustainable hydropower development. Taking into consideration potential transboundary impacts of some pilot sites, member countries are learning how to manage challenges through dialogue, exchange of information, and capacity building. Experiences and procedures from the pilot projects are expected to improve the draft framework for transboundary EIAs for member states.

2.2.5 National Environmental Impact Assessment Regulations

The three countries sharing the Sekong Basin have all developed regulations for EIAs at the project level and for strategic environmental assessments and CIAs applicable to renewable energy planning and development. In Vietnam, strategic environmental assessment is required by law. Cambodia is drafting a new EIA law, the latest version of which also considers transboundary (cumulative) impacts.

2.3 International Sustainability Principles, Safeguards, and Standards

Multiple international sustainability principles have been developed over the years, including those of the World Commission on Dams (2000), the International Hydropower Association Hydropower Sustainability Protocol, the Asian Development Bank Safeguards Policy Statement, the World Bank Environmental and Social Framework, and IFC Performance Standards. Here we concentrate on IFC Performance Standards.

IFC has developed a sustainability framework to promote sound environmental and social practices, transparency, and accountability. IFC Performance Standards on Environmental and Social Sustainability (IFC 2012), which constitute a vital part of the sustainability framework, were launched in 2006, and the latest revision was introduced in 2012. The standards are recognized around the world as the benchmark for environmental and social risk management in the private sector.

There are eight performance standards addressing the main sustainability aspects of projects. The first—Assessment and Management of Environmental and Social Risks and Impacts—requires that borrowers conduct an integrated assessment to identify environmental and social impacts, risks, and opportunities related to their projects. A system to manage environmental and social performance throughout the life of a project is required. The other performance standards specify objectives and requirements to avoid and minimize impacts on workers, affected communities, and the environment and to compensate for any such impacts (in accordance with the mitigation hierarchy).

In the context of environmental impacts of hydropower development, Performance Standard 6, Biodiversity Conservation and Sustainable Management of Living Natural Resources, is one of the most important standards. It defines natural habitats as intact geographical areas composed of plant and animal species of largely native origin. The main requirement is that a project shall not significantly convert or degrade natural habitats unless no other viable alternatives exist or, where feasible, all impacts on the

habitat will be mitigated so that no net loss of biodiversity occurs.

Separate guidance notes complement the performance standards, providing details of requirements under each standard. Of high relevance for hydropower development on the Sekong River are IFC's *Good Practice Note: Environmental, Health, and Safety Approaches for Hydropower Projects* (IFC 2018) and the World Bank Group's Good Practice Handbook, *Environmental Flows for Hydropower Projects: Guidance for the Private Sector in Emerging Markets* (WBG 2018).