

Recommendations to the World Bank's Review on its Involuntary Resettlement Policy--Lessons Learned from the Nam Theun 2 Hydropower Project in Lao PDR

Submitted by Mekong Watch, Japan

info@mekongwatch.org

April 21, 2013

I. INTRODUCTION

1. The World Bank has been promoting the Nam Theun 2 (NT2) Hydropower Project in Lao PDR as a model to reduce poverty through sustainable infrastructure development and private sector partnerships. NT2 was the first dam that the Bank funded in Mekong Region after its Pak Mun Hydropower Project in northeastern Thailand had caused serious environmental and social impacts to local communities more than 10 years before. For these reasons, it would be meaningful to examine how the World Bank's policies have safeguarded life and livelihood of poor people from the NT2 Project. Results should also give useful insights to the Bank's safeguard policies review exercise.
2. We will focus on the World Bank's policy on involuntary resettlement (OP 4.12). The following observations and recommendations are based on our experiences of monitoring the NT2 Project since early 2000's as well as occasional field visits to the project-affected communities both in the reservoir and downstream areas.
3. The World Bank approved its financing to NT2 on March 31, 2005. NT2 has been built on the Nam Theun River in Khammouane Province of central Laos. The dam blocks the Nam Theun River, a major tributary of Mekong, with a 48-meter concrete wall to create a 450-kilometer² reservoir and releases the water to the downstream Xe Bang Fai River, another Mekong tributary, to generate electricity. 6,300 people, mostly indigenous minorities, have been resettled to make way for NT2's reservoir. 200 downstream communities have also been affected. NT2 aims to generate 1,075 megawatt of electricity and sell most of it to Thailand. The World Bank estimates that the Project will contribute 2 billion USD to the Lao economy in 20 years. It is a BOOT (build-own-operate-transfer) project carried out by the Nam Theun Power Company (NTPC). The estimated construction cost is 1.45 billion. The World Bank's financial support includes a 50 million USD partial risk and 20 million USD grant through the International Financial Cooperation (IFC), as well as a 200 million USD political risk

guarantee through the Multilateral Investment Guarantee Agency (MIGA). Physical relocation of affected communities was completed in April 2008. NT2's full operation started in March 2010.

4. In the following sections, we will first report resettlement and compensation challenges facing the NT2 Project. We will then list recommendations that should be incorporated into the World Bank's revised involuntary resettlement policy to prevent the recurrence of the same or similar problems.

II. IDENTIFIED RESETTLEMENT AND COMPENSATION CHALLENGES

A. At the Project design and approval stages

5. Full efforts were not made to avoid resettlement: Alternatives to the NT2 Project were not taken into full consideration. NGOs both in Mekong and internationally presented sufficient data to show that electricity demands in Thailand, virtually the only buyer of the Project's electricity, might have been inflated and that potentialities of demand side management and renewable energy sources underestimated. The Project thus might not have been needed and involuntary resettlement could have been avoided.
6. Local communities were impacted prior to the World Bank's involvement: Forests in the reservoir area were cleared off by the Lao military-run logging company, the Bholisat Phattana Khed Phou Doi (BPKP or the "Mountain Region Development Company" in English translation), in early to mid 1990's, on the premise that NT2 would flood the area. BPKP also relocated some families from the reservoir area. Many villagers lost access to natural resources. Aid organizations became reluctant to implement development projects as the area would be flooded soon.
7. Asset measurement was not accurate and systematic: Resettled villagers later complained that a survey to evaluate their assets and properties had not been accurate because it had been carried out in 1998, seven years before the World Bank's approval of the Project. The villagers claimed that the survey results had been outdated and that they had not always been based on the actual measurement of their assets and properties but on interviews with them by authorities.
8. Affected communities could not participate in resettlement processes in meaningful ways: It was impossible for affected persons to participate in public consultations in

any meaningful ways, because 1) They had already been negatively affected by the forest clearance and had no choice but to rely on the Project's compensation; 2) They could not voice their views freely because they were afraid of repercussions; and 3) They had not been sufficiently informed about the Project. Besides the fact that some critical information was not timely disclosed to the villagers, huge linguistic, educational, and experiential gaps existed between them and so-called "experts", including the Bank officials. Genuine dialogues with the affected people were possible but it would have taken much more time, appropriate atmosphere, and the Bank officials' sincere commitments.

B. After the Project's full operation

9. Compensation was not delivered timely: Some compensation entitlements were not delivered timely to safeguard affected people's life and livelihood. For instance, in the reservoir area, cash compensation for inundated rice paddies and fruit trees was not given to many villagers before the reservoir was filled. This made it difficult to verify their complaints over the compensation, as their assets and properties had already been under water, further delaying the compensation processes. The installment of irrigation systems also did not meet the promised deadline. In NT2's downstream area, too, cash compensation to affected riverbank gardens and clean water were not delivered before the dam's full operation. Many of these non-actions are in violation of the World Bank's involuntary resettlement policy, which states that "[t]aking of land and related assets may take place only after compensation has been paid",¹ as well as the Project's concession agreement. NTPC was bound by the Power Purchase Agreement and had to start exporting electricity before the end of 2009. We suspect that the World Bank prioritized the company's contractual obligations over its safeguard requirements.

10. Mitigation measures were not delivered timely: Biomass in the reservoir area was not completely cleared off before the inundation. The quality of the reservoir water became degraded. When the dam was put into operation and the reservoir water released, villagers downstream lost access to clean water. Some of the water pumps installed by NTPC were not working. The water color turned to brown and many villagers had little choice but to continue using the river water. A skin disease/rash broke out later among some villagers living along the Xe Bang Fai River. Although the

¹ OP 4.12, Paragraph 10.

company was aware that the downstream water would be degraded, they did not inform the villagers in time.

11. The livelihood restoration scenario is not realistic: Many resettled villagers have a grim future for livelihood means. One of the livelihood restoration scenarios subscribed to the affected villagers is to grow and sell cash crops. This is not working well. There is not enough market where they can sell products. The villagers currently rely on unsustainable means to earn cash, including 1) swidden agriculture on the compensated 0.66 hectare of land, which will soon lose its soil productivity; 2) reservoir fishing, which will last only until all fish is exploited; and 3) rosewood logging, which is illegal.
12. Village saving funds are not working well: Livelihood prospects for downstream villagers are not any better. Fish catch has declined considerably in Xe Bang Fai because of the disruptions in the natural cycle of the water flows and the poor quality of the released reservoir water. Low-interest village saving funds, the Project's scheme to help the downstream villagers, are not functioning well. On the contrary, in some cases, the funds seem to be creating debts among the villagers. During our field visit in 2011, we tried to collect information in one affected village as to if each household was repaying the loan and found that about 50% of the households were experiencing difficulties paying back the money on time. A few villagers ended up working as waged laborers to return the debt because their investment had not brought back sufficient income to them.
13. The Bank's views on resettlement impacts and restoration are narrow: The fundamental problem with the NT2 compensation scheme is the World Bank's ideas to try to measure affected villagers' economic activities through very limited indicators, mainly in figures and numbers. The Bank underestimated the villagers' economic activities, such as fishing in the river and collecting Non-Timber Forest Products in forests, which are not easily measurable. The villagers' access to natural resources should also have been viewed as a social safety net to ensure their food security. At the same time, the Bank overestimated the post-resettlement restoration by looking at the villagers' temporary increase in cash income.
14. The Bank's optimism over affected people's adjustment to new environments has marginalized the poorest of the poor: The World Bank was not well aware how

difficult it might be for resettled villagers, who used to live mostly in the subsistence economy, to adjust to the cash-based economy. For villagers with extra financial or human resources (e.g., personal savings and good connections with locally influential figures), resettlement impacts could be mitigated or even turned into opportunities. For instance, NTPC provided a boat to resettled households so that they could fish in the reservoir more easily. However, the villagers were not given a boat engine. Consequently, those who could afford to buy an engine were benefitted. Similarly, villagers who are well-connected to village leaders tend to be able to have their complaint attended to more easily. The NT2 Project's compensation scheme has not helped the poorest of the poor very much. It might have had a gap widen within the resettled communities.

15. The Project's resettlement monitoring cannot detect real issues: Resettlement monitoring is not working effectively. NTPC, as well as the Panels of Experts (POE) and International Advisory Group (IAG), regularly visit the project sites and issue reports. However, they cannot identify real problems because it takes much time to build trust and solicit genuine feedback from affected villagers. It is also important to speak with them in appropriate conditions, e.g., when government official and other authorities are not around. Consequently, critical observations mainly come from other sources such as NGOs. For example, the issue about uncompensated farming land and fruit trees described in Paragraph 9 became known only when NGOs visited resettled villages in 2010, almost two years after the resettlement had been completed. For similar reasons, grievance procedures, including the Inspection Panel, may be underutilized.
16. Some critical information has yet to be disclosed to affected villagers and the general public: Not all reports which would be useful in monitoring the Project's resettlement impacts have been publicized. These reports include the 2010 survey on the water quality in the downstream area, NTPC's survey on resettled communities' living standards, and monitoring reports on livelihood restoration among downstream communities. These documents are at best only partially disclosed, despite NGOs' repeated requests and complaints.
17. Lessons from the Project are not incorporated into national policies and procedures: Lessons from the NT2 Projects' resettlement experiences are not sufficiently used to strengthening Lao PDR's environmental and social protection standards. For instance,

the World Bank approved a program for the Lao Government titled “the National Policy on Environmental and Social Sustainability in the Hydropower Sector” in order to apply the same environmental and social protection standards used for NT2 to other hydropower projects in the country. Article 5 in the policy states that consultation reports, EIAs, mitigations plans, and monitoring reports for the hydropower sector must be disclosed to the public and that the project implementer must set up a center in Vientiane for information dissemination. These improvements are not fully made.

III. RECOMMENDATIONS BASED ON THE CASE ANALYSIS

18. The policy, especially its implementation, must be strengthened: Overall, based on our analysis on how the World Bank’s involuntary resettlement policy has safeguarded villagers affected by the NT2 Hydropower Project as laid out above, we believe it is important that the World Bank will not weaken or dilute its involuntary resettlement policy. Rather, the Bank should see the review exercise as an opportunity to further strengthen the policy, especially on its implementation end.
19. Ways to avoid involuntary resettlement should be pursued more thoroughly (See Paragraph 5): Under the revised policy, project and resettlement alternatives must be fully explored. When large-scale resettlement is likely, alternatives, including a non-project option, must be explored by an independent body to ensure that the fundamental goals of the involuntary resettlement policy, i.e., to avoid or minimize involuntary resettlement, are put into full practice rather than remaining to be an aspirational statement.
20. Resettlement impacts prior to the Bank’s involvement must be fully compensated (See Paragraph 6): The revised policy must state clearly that it will apply to cases where involuntary resettlement, including restrictions on access to land and other natural resources, however partial or temporal they might be, has occurred before the World Bank’s involvement with the project. The language in the World Bank’s *Sourcebook on Involuntary Resettlement* (2004) on the issue (i.e., “If resettlement *for the project* begins before initial discussions with the Bank and the acquisition of the area is directly linked to the Bank project, then the substantive aspects of OP 4.12 apply retroactively. In other words, if an area is being cleared *in anticipation of*,

or preparation for, a project, OP 4.12 would apply”² should be written in the new policy.

21. Assets and properties of affected people must be evaluated in more systematic and participatory manners (See Paragraph 7): The revised policy must clearly state that affected people’s assets and properties must be measured household by household with their full participation. Measurements must be updated to accurately reflect market values at the time of resettlement. Resulted assessments must be verified and agreed upon by each affected household. Affected people should be informed in advance that they have the rights to question survey results and have the results corrected by authorities.
22. Resettlement impacts and livelihood restoration must be assessed in wider perspectives and participatory manners (See Paragraph 13): The new policy must require that the World Bank does not rely too heavily on cash when compensating affected people. Impact assessments should examine the affected people’s resources and livelihood means not only in economic but social, cultural, and religious terms and in full consultation with them. Resettlement/compensation programs thus developed must be fully implemented to restore or improve the affected people’s life and livelihood.
23. Meaningful participation by affected persons in resettlement processes must be articulated in great detail (See Paragraph 8):
 - a) The revised resettlement policy should require that all affected persons must be fully informed about their rights and entitlements under the policy, including their rights to file a complaint with the World Bank’s Inspection Panel.
 - b) The revised policy should clearly articulate what constitutes meaningful consultation with affected people in detailed ways, as in the Asian Development Bank’s (ADB) 2009 Safeguard Policy Statement.³

² Page 8.

³ “Meaningful consultation” is a process that: “(i) Begins early in the project preparation stage and is carried out on an ongoing basis throughout the project cycle; (ii) Provides timely disclosure of relevant information that is understandable and readily accessible to affected people; (iii) Is undertaken in an atmosphere free of intimidation and coercion; (iv) Is gender inclusive and responsive, and tailored to the needs of disadvantaged and vulnerable groups; and (v) Enables

- c) The World Bank should follow ADB and state clearly in its new involuntary resettlement policy that the Bank respects Indigenous Peoples' rights to free, prior, and informed consent (FPIC) to resettlement caused by the World Bank-funded projects as declared in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

24. Compensation and mitigation measures must be delivered in timely manners (See Paragraphs 9 and 10): The revised policy must incorporate a stronger language to require appropriate compensation entitlements, in particular compensation to affected people's assets and properties (e.g., lands, buildings, farms, crops, etc.), to be delivered to them before they are resettled or impacted. Similarly, mitigation measures that are necessary to protect affected persons' access to basic human needs, in particular clean water, food, and electricity, must be provided on time so that their access should not be disrupted.

25. Resettlement impacts and restoration must be monitored over a long period of time and leverages and resources for follow-up corrective measures must be secured (See Paragraphs 11, 12, 14 & 15): The revised policy must require that resettled people are supported until their income levels are restored to the pre-project level or above the poverty line, whichever is higher, as the policy's goals state. The World Bank's current commitment to monitoring resettlement⁴ must be further strengthened in the revised policy. The project's resettlement impacts may emerge and be felt more keenly by affected persons after some or even long time. Conversely, the borrow/project implementer's incentives to respond to resettlement impacts tend to decrease, as engineering parts of the project are completed and all disbursements are made. An assessment of resettlement processes and results at the project completion, as well as follow-up planning, must be carried out by an independent body. The results of the assessment and planning must be disclosed to the public. The revised policy should also clearly state that both the borrower/project implementer and the World Bank monitor effectiveness of follow-up measures and allocate sufficient resources to carry them out.

the incorporation of all relevant views of affected people and other stakeholders into decision making, such as project design, mitigation measures, the sharing of development benefits and opportunities, and implementation issues" (Appendix 2, Paragraphs 26 & 27).

⁴ OP 1.24 Paragraph 24 and BP 1.24 Paragraph 16.

26. Lessons from resettlement experiences must be incorporated into project evaluation (See Paragraph 15): The revised policy must be more specific about how evaluation on resettlement performance is incorporated into overall project performance evaluation. Concrete performance indicators to assess resettlement outcomes must be devised and included in a project results framework, as recommended by the Independent Evaluation Group⁵ to ensure that resettlement performance becomes an important dimension when assessing the project's development objectives. These indicators and results of performance evaluation must be disclosed to the public.
27. All information relating to resettlement monitoring must be disclosed (See Paragraph 16): The revised policy must state clearly that all reports and documents relating to the monitoring of resettlement outcomes must be disclosed both to affected people and the general public. They must also be made available in easily accessible locations.
28. Concrete procedures should be worked out to reflect lessons from resettlement processes and results into the recipient country's national policies and procedures (See Paragraph 17): The revised policy must work out detailed steps to feed lessons from resettlement of the World Bank-funded projects into the borrowing country's national environmental and social protection standards with the purposes to improve them at least to the levels that are compatible with the World Bank's involuntary resettlement policy.

⁵ Independent Evaluation Group, *Safeguards and Sustainability Policies in Changing World: An Independent Evaluation of World Bank Group Experience*, the World Bank, Washington D.C., 2010. page 105.