

VOLUME 3 – CHAPTER 3

LEGAL AND POLICY FRAMEWORK AND ENTITLEMENTS

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3 LEGAL AND POLICY FRAMEWORK AND ENTITLEMENTS

3.1 INTRODUCTION

Involuntary resettlement is not new to the Lao people. Centuries of changing fortunes have seen villages and groups of villages forced to relocate to survive. What is relatively new is the need for people to relocate in order to make way for development of projects considered to be in the national interest, such as hydroelectric schemes.

The principles of protecting such Project Affected Peoples (PAPs) are enshrined in the Constitution whereby the State promotes people's ownership of land and guarantees equality whilst both obliging its citizens to protect the environment and aiming to shift the economy from subsistence based to commodity based. Further legislation promulgates these principles and offers specific protection for those required to resettle as a result of hydropower schemes in particular under the Law on Water and Water Resources and the Electricity Law described below.

Due in part to the size of the Project and previous experience on other hydropower schemes a number of pieces of legislation have been introduced to deal specifically with the Nam Theun 2 Project. This legislation guarantees rights to those people who are to be resettled as a result of the Project including their rights to land and forest. Furthermore, the National Assembly has approved the agreement under which the concession for the Project is granted to NTPC detailing, *inter alia*, the obligations of both NTPC and the GOL to the resettlers.

This chapter reviews each of these aspects of the legal and policy framework in Lao PDR that protects, compensates and to some extent restricts the rights of the resettlers as follows:

- review of national laws and legal instruments that are of importance to relocated people and the resettlement and compensation plan for Downstream Areas;
- review of the national and Nam Theun 2 resettlement policies;
- review of the legislation that has been developed and approved specifically for the social and resettlement components of the NT2 project; and
- review of legal documents and policies that are not part of the usual national legislative framework including the Concession Agreement and the World Bank Policies.

3.2 NATIONAL LAWS AND LEGAL INSTRUMENTS RELEVANT TO RELOCATION

3.2.1 Introduction to the Legal Framework of Lao PDR

In 1975, the Lao People's Revolutionary party (LPRP) abolished the 1947 Constitution and all prior legislation. Much of the existing legislation, especially in the forestry sector, has been issued under the framework of the current Constitution (established in 1991). The current legal system can be described as a hybrid of a civil code and common law system, driven recently more by the need to adopt a large body of legislation, rather than by the capacity to implement the legislation.

The National Assembly¹, first elected in 1992 under five-year terms, has been an active legislative branch by passing nearly 50 comprehensive laws, each requiring issuance of implementing legislation by the Prime Minister, ministries and local authorities by way of decrees and regulations. Despite this growing base as a civil law structure, the legal system remains in an early stage, difficult to interpret, implement or enforce, especially in the natural resources sector.

Key legislation in the natural resources sector includes a Forestry Law and a Water Resources Law enacted in 1996, Electricity Law in 1997, an Environmental Protection Law enacted in 1999 and a Land Law first enacted in 1997 and amended in 2003. This legislation and its implementing regulations provide a legal foundation for the consideration of how resettlement is to be planned and carried out for a large hydropower scheme like NT2.

¹ The NA has the authority to initiate, review and pass laws as well as approve State budgets and socio-economic development plans, which have included annual timber harvest quotas. (Constitution, Ch. 4).

An overview of the pertinent articles contained in this legislation is provided below. Of particular interest is Article 28 of the Water Resources Law, which states that in the case of hydroelectric projects, the owners shall provide appropriate livelihoods for the resettled population and pay for this out of project funds. The Electricity Act, (Article 14 and 18), states that licensees shall pay compensation for any damage to private and/or public properties or rights caused by their project. Furthermore, MAF Orders 54 and 377 (1996) require that villagers receive compensation for resettlement due to infrastructure or development projects approved by the Government. Whilst this legislation provides guidelines specifically for resettlement it is also important to note that these laws also impose restrictions upon citizens generally with regard to their use of the country's resources. The resettlement policy will take into account these laws when planning guaranteed livelihoods for the relocation.

3.2.2 The Constitution (August 14, 1991)

The Constitution is the supreme legal document in Lao PDR and all other legislation must be consistent with its provisions. Some of the Articles have been implemented by laws and regulations, but none related to the rights of ethnic minorities have yet been interpreted by the Court system. Clearly ethnic minorities and all Lao citizens have the constitutional right to protect their customs, their land and their culture and to enforce such rights against the State if infringed upon.²

Article 8: All ethnic groups have the right to protect, preserve and promote their fine customs and culture. All acts of division and discrimination among ethnic groups are prohibited.

Comment: Since the resettlers of the Project are of a variety of ethnic groups, careful attention must be made to ensure that NTPC's resettlement policy takes account of the customs and culture of each group. This principle relates not only to ethnic minorities but to all citizens, irrespective of their sex, or social status as further described in Article 22.

Article 13: The economic system objectives are the expansion of production and to transform the subsistence economy into a commodities economy.

Comment: Whilst the customs and cultures must be maintained, Lao PDR is a developing country in need of foreign investment and currency that the Project is to provide. At a micro-economic level the NT2 Project must look to provide the resettlers with the means of moving beyond subsistence living.

Article 14: The state protects and promotes all forms of state collective and individual ownership.

Article 15: As for the land, which is owned by the national community, the state ensures the right to use, transfer, and inherit it in accordance with the law.

Comment: Whilst the land in the Lao PDR is the property of the national community, individuals may acquire property rights akin to ownership. Where families are to be moved from their own land it is an important principle of the NT2 Resettlement Policy that the resettlers shall be granted permanent rights of ownership to the new land to the extent possible under Lao Law.

Article 17: All citizens must protect the environment and natural resources: land, underground, forests, fauna, water sources and atmosphere.

Article 22: Lao citizens, irrespective of their sex, social status, education, faith and ethnic group are all equal before the law.

Article 28: Lao citizens have the right to lodge complaints and petitions and to propose ideas to relevant state organizations in connections with issues pertaining to the rights and interests of collectives or of their individuals. Complaints, petitions and ideas of citizens must be considered for solutions as prescribed by law.

Comment: This principle is incorporated into the NT2 resettlement process in two main ways (a) through consultation process, both prior to resettlement and during resettlement, and (b) thorough the implementation of the grievance procedures.

² The Articles of Law in this chapter are an English summary of the provisions - they are not direct quotations. The English translations of the laws themselves are attached in Appendix C and D.

3.2.3 The Land Law (revision of 21st October 2003)

The Land Law is the key legislation covering the rights and procedures regarding the framework for tenure, access, use and management of land, including forestland, by villagers and other parties within the NT2 watershed and resettlement areas. It is based on the Land Law of 1997 with minor amendments. PM Decree 3 and MAF Instruction 822 implement provisions of the Land Law regarding the allocation and zoning of forestland within village boundaries, Decisions of the Ministry of Finance (996, 997 and 998) govern land titling whereas PM Decree 150 governs land tax issues.

See Articles 70 and 71 below, MAF Orders 54 and 377 and the Electricity Law for sections governing the right of villages to just compensation for the taking of land by the State for the public good.

- Article 3: Land within Lao PDR is the property of the national community (as stated in the Constitution, Article 15) for whom the State is the uniform central administrative representative throughout the Country and individuals ... are assigned to effectively use the land..... (only non-forest land held in private title or land held under a long-term lease can be transferred).
- Article 5: The State protects the legal rights and benefits of those who have effectively received the right to use land including the right to transfer it.
- Article 6: Individuals have the duty to preserve land in good condition.
- Article 7: Individuals or organizations are prohibited to squat on the land, the use of land must be approved by the State.
- Article 13: The State authorizes Lao citizens to lease state land for a maximum period of thirty (30) years. Such lease may be extended on a case-by-case basis.
- Article 17: The State may authorize individuals to use agricultural land:
- for growing rice and raising aquatic animals not to exceed two hectares per one labourer in a family;
 - for fruit orchards and vegetable farming not to exceed three hectares, respectively, per one labourer in a family.
- Article 18: The District may grant the right to use agricultural land within its administration.
- Article 21: The State authorizes individuals to use forest lands (defoliated or degraded) not to exceed three hectares per one labourer in a family.
- Article 22: The Districtmay grant the right to use forest land within its administration (DAFO administers land use allocation in coordination with Lands Office).
- Article 43: Land registration is to certify the legal use of land to individuals and organizations.
- Article 63: The right of an individual to use land shall terminate when . . . (2) the State takes back the land in the public interest. (however, the landholder is entitled to just compensation for the taking by the State – see Article 70 below, MAF Orders 54 and 377 and the Electricity Law).
- Article 70: When it is necessary to use an individual's land in the public interest, the State must make appropriate compensation for damages.
- Article 71: In determining damages, there must be a Committee comprised of representatives of interested parties to determine the value of the damages.

These articles illustrate the inextricable involvement of the State in all aspects of the rights of individuals and organizations to land, from granting the tenure under Articles 3 and 43 to the use to which that land can be put under Articles 17, 18, 21 and 22. This governance is performed at both a central and district level through the relevant ministries.

3.2.4 Law on Water and Water Resources, No. 005 (November 11, 1996)

The law on water and water resources recognizes water as the principal natural resource and the need to regulate, exploit and administer both its use and the use of plants, animals and minerals found within aquatic environments. Of particular relevance to the issues of resettlement are the following:

Article 25: The Government promotes the development and use of water resources in small, medium and large scale energy production from water sources with such potential. The use of water resources shall consider its potentials and impacts.

In building a hydropower dam, consideration shall be given to the preservation of: the sources of water, forests, the environment, flood protection, water supply, irrigation, water transport, fishing and fisheries, aquatic life and others.

Article 28: When resettlement is necessary from the area and vicinity of water sources development projects, project owners shall provide assistance in providing appropriate shelters and livelihoods for the resettled population. The funds used to finance resettlement, assistance or compensation to the population shall be included in the projects' investment.

Article 29: ... there are still strict obligations to preserve and rehabilitate and maintain forest resources and forestlands in water catchment areas in conformity with the water source allocation plan, forests, land, and seasons, specifically in the area of water origins or around water sources.

These articles provide the basis of the Project's broad obligations for environmental mitigation but also for assisting the resettlers, whilst recognizing the potential for hydropower in Lao PDR. As discussed in Chapter 19 and under the Concession Agreement (Appendix A), the Project has included the costs of resettlement in its overall investment budget.

3.3 NATIONAL RESETTLEMENT POLICY AND GUIDELINES

An examination of the relevant laws and decrees indicates that the Lao people have certain basic rights and obligations in relation to resettlement and compensation. Among these, the right to receive compensation for land withdrawn by the State is paramount. However, while compensation is an important factor in instances that call for resettlement, it is not the only factor. Successful resettlement requires that detailed plans are prepared in advance and that such plans are based on a general set of principles and rules that would apply to the preparation and implementation of these plans.

The National Resettlement Policy is one such set of principles and rules. A first draft of this policy, formulated by the Chairman of the NT2 Resettlement Committee, was discussed at the NT2 Resettlement Policy Workshop in Thakhek in September 1996, attended by more than forty national, provincial and district government officials and representatives from other organizations. Subsequently, changes and suggestions resulting from the participants were incorporated into a second draft of the policy. This and further drafts of the policy have been reviewed separately by the World Bank, the Panel of Experts and the Asian Development Bank. Workshops including government officials from a range of ministries have also been used in the development of the policy by STEA³ (see SDP Volume 1, Appendix C9.1 for a recent draft of the policy).

The policy is to be implemented by way of a PM Decree (a draft of which is attached in SDP Volume 1, Appendix C9.2). The provisions of the Decree aim to:

- (i) help integrate social dimensions in development projects,
- (ii) address measures to mitigate adverse social impacts, in a particular focus on vulnerable groups; and
- (iii) have a comprehensive approach to address social issues in development projects.

The Decree also aims to ensure that mitigation measures, including compensation, relocation and economic restoration of affected people are carried out in accordance with the provisions and stipulations of the Constitution and the various relevant applicable Laws and Decrees of Government, taking into consideration special needs and features of the various ethnic groups of the Lao PDR.

³ The material presented in the Policy is generally culled and assembled from several sources. Major among these include the ADB's *Handbook on Involuntary Resettlement*; *World Bank's Draft Source Book on Resettlement*; *Resettlement Guidelines* prepared under ADB TA 3133-LAO, "Strengthening Social and Environment Management in Lao PDR", July 2000; and *Resettlement Guidelines* prepared under the WB funded "Hydropower Development Strategy for the Lao PDR" in September 2000. Additionally, information presented in the Policy is also drawn heavily from several development projects in Lao PDR as well in neighbouring countries. Where relevant, international best practice examples are presented in the Guidelines with an objective to bring these Guidelines to acceptable international standards, without losing focus on the country context. The final policy and the decree have been prepared under ADB loan 1857: Environment and Social Program. The policy and Decree have been approved by Cabinet and the Decrees scheduled to be issued by the Prime Minister within 2004.

The STEA is assigned to issue requisite Implementation Regulations and Resettlement Technical Guidelines in support of this Decree and to regulate resettlement planning and implementation activities in development projects nationwide, and the latest draft of these (dated 15 April 2004) is attached in the SDP Volume 1, Appendix C 9.3.

3.4 NAM THEUN 2 PROJECT POLICIES

3.4.1 Nam Theun 2 Resettlement Policy

Development of a resettlement policy specific for the Nam Theun 2 Project has taken place in parallel with the preparation of the draft national policy. It has been developed by the NT2 Resettlement Committee, which was set up by GOL in 1995. The steps in the process to prepare a project-specific resettlement policy have been:

- September 1996 - NT2 Resettlement Policy Workshop in Thakhek.
- March 1997 - Review by NT2 Study of Alternatives; review by GOL Workshop; and discussion by Public Briefing Session.
- May 1997 – Review by World Bank Mission.
- June 1997 – 2-day Public Consultation Workshop; review by PoE and IAG.
- February 1998 - Approval by State Planning Committee of NT2 Resettlement Policy.
- January 1999 - 2 day Public Consultation Workshop on RAP.
- September 1999 - GOL approval of RAP, including NT2 Resettlement Policy.
- November 2001 and January 2003 – World Bank Safeguards Policy Missions.
- July 2002 – Resettlement Committee Policy Adjustment.

The Policy was last discussed at the GOL Committee of Planning and Cooperation on July 22, 2002. At that time a few changes required to take into account comments and the results of discussions on the Concession Agreement (see section 3.5 below).

The NT 2 Resettlement Policy sets out the objectives of the policy, the geographical and impact areas it covers, and then the policy guidelines. It is presented in full below.

It should be noted that the area/populations of policy coverage is not restricted only to those areas listed in Article 2, but includes all areas and persons affected by the Project. Clause 2.1 includes PAPs on the Nam Theun downstream of the dam, and those affected by substations. In articles 4 and 5, all affected persons are entitled to rehabilitation as well as compensation. Article 5, clause 5.8 may be revised to ensure that all affected people occupying land - regardless of proof of recognizable rights or claims to land - will still qualify for entitlements. They may not be entitled to compensation for loss of land but are still entitled to compensation for their loss of livelihood and legitimate assets, and to other assistance so that that they will be at least as well off as they would have been in the absence of the Project.

Nam Theun 2 Resettlement Policy (translation of the 1998 policy)

Article 1: Objectives of the Resettlement Policy

- 1.1. This policy outlines the basic principles and measures governing the resettlement, provision of agricultural and forestry production areas and compensation to the population of the Nam Theun 2 Project zones, with the view of upgrading and ensuring sustainable livelihoods.
- 1.2. It provides that the population participates in the consultation, planning and design process of their new settlement and production areas.
- 1.3. It provides for the application of special measures as required towards ethnic minorities and vulnerable persons to assist them to take care of their needs and foster self-reliance.
- 1.4. It provides for the construction of infrastructure in new settlements areas in accordance with designs approved by the Resettlement Committee in the best interests of the population in and around the Resettlement Areas.
- 1.5. The population to be resettled should materially improve its standard of living after relocating; individual household incomes should be above the national poverty line within four years after physical relocation and should be supported in the interim period.
- 1.6. The policy provides for replacement land being available to all those interested; cash compensation would only be

considered for those with specific plans to permanently move out of the district.

- 1.7. The resettlement and rehabilitation plans will be conceived and executed as specific development plans.

Article 2: Policy Areas

The areas of this policy are those where the population is directly and indirectly impacted by the Nam Theun 2 Project, including:

2.1. Khammouane Province

- Nakai District: The dam and reservoir area covers the territory of 15 villages in Nakai District.
- Gnommalart District: The powerhouse, weir and water basin, outflow channel from the powerhouse and first portion of the high voltage transmission line.
- Mahaxai District: Outflow canal to the Xe Bangfai and the middle portion of the high voltage transmission line.
- Thakhek District: The 115kV transmission line, from Mahaxai to Thakhek.
- Nong Bok and Xe Bangfai Districts: Xe Bangfai downstream.

2.2. Savannakhet Province

- Xayboulee: May affect by releasing water from the reservoir and to Xe Bangfai and remaining portion of the high voltage transmission line.
- Khanthanbouly District: and remaining portion of the high voltage transmission line.

2.3. Bolikhamxay Province

- Khamkeudt District: One portion of the reservoir on the dam's right side, the new road, and two villages: Ban Sop Hai and Ban Nam Nian

The NT2 Resettlement Policy is directly linked to the above Project components and operation of the powerhouse, dam and reservoir.

Article 3: Selection of Resettlement Areas

Based on the preferences of the reservoir population and in accordance to the Decree 193/PM of December 2000, three areas have been selected for resettlement:

- Area 1: Near Ban Oudomsouk (Khammouane Province) covering an approximate area of 1,600 hectares.
- Area 2: On the east of Ban Done and Ban Khone Khen, Nakai District (Khammouane Province), covering an approximate area of 10,300 hectares.
- Area 3: On the west of Ban Nakai Tai and Ban Nakai Neua (Khammouane Province), covering an approximate area of 10,900 hectares.

Article 4: Compensation Policy

- 4.1 Compensation based on the principle of replacement cost will be provided for agricultural lands, gardens, building land, fruit trees, houses, schools, hospitals, dispensaries, temples, cemeteries, markets, buildings and any other assets and activities that will be affected.
- 4.2 The Project will provide housing and agricultural-forestry production land for each household in the reservoir area at the time of the population and assets survey. For any household not wishing to receive any such land or housing, the Project will pay cash compensation at replacement cost based on the local market value prevailing at the time.
- 4.3 Fruit trees shall be compensated according to the agreement between the concerned parties and/or locally prevailing market prices.
- 4.4 Schools, hospitals, dispensaries, markets, temples, clubs, cemeteries, roads and other constructions owned by the State and the village will be re-built by the Project or will be otherwise compensated for at their replacement cost.
- 4.5 The dismantling of old houses and construction cost of new replacement houses will be, jointly with the owners, determined by the Project and will be compensated. Transportation to the Resettlement Area (including wood prepared by the population) and labor and equipment provided by each family will be compensated. Each house may be designed by the population itself according to their preference. Moving of household goods including livestock will be arranged at no cost to the household.
- 4.6 Villagers resettling outside the Resettlement Areas (to other localities) will receive full compensation from the Project in one single payment for agricultural land, gardens, fruit trees, houses, building land and other losses and will be provided transportation to their destination. Any self-resettlement proposals must be reviewed for feasibility and approved by the Resettlement Committee before agreement to cash payment.
- 4.7 Food security will be provided to households until the Policy income target has been met, according to the Regulations.
- 4.8 All persons that sustain a loss under the Project will be entitled to adequate and prompt compensation or replacement of assets lost.
- 4.9 Under this policy, regulations will be made that classify those who are entitled to compensation and the level of

compensation entitlement.

- 4.10 Households in the Project's Reservoir Area as of October-1998 will be entitled to compensation and have been registered, including those household of natural growth and household of any government employees who have been assigned to the area since the registration process.

Article 5: Other Provisions

- 5.1 The resettlement transition period (from relocation to self-sufficiency) will be minimized and adequate social, economic and environmental support will be provided during this period.
- 5.2 Those to be resettled will, as a matter of their preference, be relocated on the sites situated on the Nakai Plateau in areas as mentioned in Article 3. Those few households wishing to relocate off the Nakai Plateau will have that option and will be paid adequate compensation.
- 5.3 Villages will be resettled as villages and according to their traditional groupings; where two or more villages are to be combined in a new location, agreement of all concerned villages will be obtained. Living standard in the new villages must be better than before.
- 5.4 New villages will be provided with appropriate community infrastructure as specified in the Resettlement Action Plan.
- 5.5 Insofar as changes in household economic activities are proposed, the replacement opportunities will recognize the ability and interest of the persons affected; new activities will be introduced on a sound economic basis, with risks identified and understood.
- 5.6 All compensation, relocation and rehabilitation costs will be borne by the Project, with funds disbursed through an appropriate institutional structure.
- 5.7 All those affected by the Project will have the same basic rights, although entitlements may vary.
- 5.8 Proof of residency or traditional use from the Village administration is required to establish the right to compensation.
- 5.9 The allocation of farm/house lots will recognize family composition; households with large numbers of present or future labor-force members will be considered for allocation of plots that can accommodate larger or expanding households.
- 5.10 The socio-cultural composition of the affected villages will be recognized in the resettlement plans and their implementation. Special measures will be planned for vulnerable groups.
- 5.11 All affected persons will have effective access to grievance procedures that would deal with problems that may emerge at the household or village level.
- 5.12 The program of resettlement will be linked to the Project construction program; reservoir impoundment will not proceed until all affected persons have been relocated in accordance with the approved resettlement schedule.
- 5.13 Any host people affected by the resettlement program will be compensated according to the degree of the impact.

Article 6: Implementation

- 6.1 The NT2 Resettlement Committee will be responsible to carry out the effective implementation of the Resettlement Action Plan and for the coordination of the organizations involved; the Resettlement Committee will instruct the Resettlement Management Unit (RMU).
- 6.2 The NT2 Resettlement Committee and the Resettlement Management Unit (RMU) will prepare the Regulations under this policy.
- 6.3 The NT2 Resettlement Policy is to be recognized and assisted by Ministries, Organizations equivalent to Ministries, Committees and Rural Authorities for effective implementation.

Article 7: Validity

- 7.1 The policy replaces the NT2 Resettlement Policy No. 023/SPC, dates February 1998 and will be come effective on the date of signature entered upon.

3.4.2 Resettlement Committee Regulations

While the NT2 Resettlement Policy (and the Concession Agreement) is the overarching framework describing the resettlement principles, it specifies (article 6.2) that more specific regulations will be issued dealing with individual procedures for the successful implementation of the policy. It is the intention that, as detailed planning and implementation proceeds, additional Regulations under the Policy will be passed by the Resettlement Committee, at the recommendation of the Resettlement Management Unit and NTPC. Together, the Policy and Regulations will form the basis of GOL authority under which resettlement and compensation take place. These regulations are executed by the Provincial Governor, as Chairman of the Resettlement Committee, and therefore have the authority of a Provincial Decree.

The following Resettlement Committee Regulations were issued prior to the signing of the Concession Agreement, and are now incorporated into this Concession Agreement.

(a) Resettlement Committee Regulation Number 1 - Eligibility

Lists the categories of people eligible to receive entitlements and a process of updating the register of such people including due to natural growth of households. Further details of the eligibility of such people and hence the identity of those whom NTPC is obliged to consider is detailed in the Concession Agreement.

(b) Resettlement Committee Regulation Number 2 - Entitlements

Lists the entitlements for items such as housing, cash, infrastructure and production assistance for the different categories of people listed in Regulation Number 1.

(c) Resettlement Committee Regulation Number 3 - Downstream Areas Impacts

Describes the survey and monitoring work NTPC shall undertake one year prior to commercial operations and at approximately two and four years thereafter.

Resettlement Committee regulations which will continue to be drafted as and when required. To date, some regulations have been drafted in relation to Resettlement on the Nakai Plateau and compensation and livelihood restoration of PAPs impacted by Project Lands (see SDP Volumes 1 and 4). No further regulations have been drafted in relation to impacts, PAPs or compensation in the Downstream Areas.

3.5 THE CONCESSION AGREEMENT

3.5.1 Introduction

While national legislation and policy provides for the general rights of the resettlers and the obligations of the owner of a large hydropower project, the specific obligations of NTPC, and to some extent the GOL to satisfy these requirements is set out under the Concession Agreement (“**CA**”) that was signed on 3 October 2002 between NTPC and the GOL, represented by the Committee for Investment and Co-operation and acting for and on behalf of the Lao PDR⁴.

Under the CA, the GOL grants NTPC the right to implement the Project on a build, own, operate and transfer basis for a period of 25 years (the “**Concession Period**”) following the occurrence of the Commercial Operations Date, subject to any extensions for Force Majeure.

The CA has been approved by the National Assembly on 12 October 2002. As such the rights and obligations of the GOL and NTPC including in relation to social and resettlement issues are approved by the highest legislative body in Lao PDR. Indeed, it is the CA that requires the production and approval by the GOL of this Resettlement Action Plan (Clause 30.1).

The GOL and NTPC acknowledge that the Project will cause environmental and social impacts in the Lao PDR and that NTPC and, where applicable, the GOL will be responsible for addressing, alleviating and/or remedying such impacts.

There are two main sections in the CA which dealing with the resettlement and compensation of the affected population and set out how the GOL and NTPC will comply with and implement the Nam Theun 2 Resettlement Policy in order to further the Project’s resettlement objectives:

- Clause 30; and
- Schedule 4

In the 2002 version of the CA, it was only Schedule 4 Part 1 that related to social and resettlement aspects of the NT2 Project. However, the March 2005 revision has developed a specific schedule or section – Schedule 4 Part 4 – to deal specifically with the Downstream Areas (see Annex 3-1).

⁴ A revision of the Concession Agreement is due to be signed in March 2005

3.5.2 CA Clause 30: Environment and Social issues

This clause details, amongst other aspects;

- The companies and the GOLs representations and warranties; (for example, clause 30.1(b)(i), notes that the RAP has been developed to identify and address Project Impacts, while in clause 30.12,(b)(i) the company warrants that its obligations in respect of or under its Environmental and Social Objectives) (Schedule 4 Part 1 and 4) have adopted the findings and recommendations of the Plans (SDP). In case of inconsistency between the Social Objectives set out in the Concession Agreement and the provisions set out in the SDP, the Social Objectives shall prevail.
- The environmental and social Objectives and the Companies (and GOLs), and their Obligations to implement them;
- Securities and contingencies in case of failure of the company to implement, or the occurrence of unanticipated project impacts;
- Responsibilities for UXO and obligations on termination;
- Detailed roles, responsibilities, functions and reporting of the POE;

3.5.3 CA Schedule 4, Part 1 (Plateau and Project Lands)

Part 1 of Schedule 4 (see Volume 1 Appendix A.1) details the Objectives and Provisions of Resettlement as relates to the Plateau and Project Land areas, and a general overview of the obligations and responsibilities of both NTPC and the GOL, the duration of these obligations and institutions within NTPC and the GOL who are responsible for the process. The monitoring of the resettlement process will be performed both internally by the Company and the GOL and also by independent parties. This schedule provides for the eligibility of the resettlers to the benefits NTPC will provide, with a population survey undertaken in October 1998, another in August 2003, and a final pre-relocation survey to be undertaken approximately within 3 months prior to relocation

This part also provides a summary description of;

- (a) the development of the villages in both the planning stage (including population and village location surveys and consultation and clearance of UXO) and the implementation stage (including land distribution and titling, relocation, construction and as described below the entitlements of the resettlers).
- (b) the planning and implementation of a series of livelihood development programmes on a village and community basis, including the livestock and agriculture programmes, the reservoir fisheries development and management programme, and the program to develop the sustainable management and commercial use of the forestry in the Resettlement Area, by the Resettlers; and.
- (c) the planning and implementation of a range of community development activities

Should problems arise and in accordance with Article 28 of the Constitution, the CA sets out a grievance procedure. The CA revisions of March 2005 now include a detailed PAP Entitlements Matrix (Annex 3-1). There is also a summary of the funding budget for each program, and the funding arrangements for these activities.

3.5.4 CA Schedule 4, Part 4 (Downstream Areas Component)

Part 4 of Schedule 4 has been developed specifically to address the issue of the Downstream Areas impacts and their mitigation and compensation. It provides and specifies;

- Definitions relevant to the Downstream Areas;
- The Scope of Mitigation, Compensation and Resettlement Process;
- The Baseline and post-COD surveys to be undertaken including (i) Fisheries surveys and (ii) Socio-economic surveys;
- The Company's obligation to develop and fund Mitigation, Compensation and Resettlement Process, which will focus on;
 - (a) livelihood restoration to replace proteins and fisheries income losses;

- (b) restoration of domestic water supply and river crossing access;
- (c) replacement of irrigation pumps;
- (d) physical impacts mitigation, compensation, resettlement and rehabilitation; and
- (e) flood management;
- The Company's funding obligation, being \$16 million for the Mitigation, Compensation and Resettlement Process, and the allocation of these funds pre and post COD;
- the Objectives of the Mitigation, Compensation and Resettlement Process;
- The Provisions of the Mitigation, Compensation and Resettlement Provisions;
- The Preparation of an Implementation Plan;
- The joint responsibility of the GOL and NTPC to develop the Plan, with the parties taking such responsibility as is allocated to them in the Implementation Plan; and
- the detailed Entitlements of the PAPs

3.5.5 Entitlements

Schedule 4 Part 4, clause 7 provides a matrix of the entitlements of the Project Affected People in the Downstream Areas, including provisions for compensation and/or restoration in relation to;

- permanent loss of land;
- temporary loss of land;
- loss of houses or other fixed assets;
- loss of crops, trees and other productive assets;
- loss of common property or community structures; and
- loss of common property resources.

It also makes provision for special allowances and transitional measures, including;

- Disturbance allowances;
- Materials transport allowance; and
- Rice and protein supplements to be provided as required to PAPs to the extent that their food security has been impacted by the Project and not yet restored, as assessed by the village development committees, and confirmed by the District social welfare office.

3.5.6 Security

The Concession Agreement also provides Project level certain contingency and safety net measures. For example;

- As security for NTPC's various resettlement obligations, NTPC must provide to the GOL a number of letters of credit. If the *Company fails to comply* with its environmental and resettlement obligations it must make certain payments to the GOL. An independent Panel of Experts will review compliance of NTPC and the GOL to the Social and Environmental obligations including completion of the resettlement obligations, thus the end of the Resettlement Period. These payments are secured from within 30 days of the construction phase commencement by a letter of credit of USD 2,500,000. (CA Clause 30.8 and 30.12).
- NTPC warrants that the environmental and social objectives set out in the Concession Agreement are reasonably sufficient to mitigate against or compensate for the reasonably foreseeable project impacts. Nonetheless, NTPC also recognizes that there may be *unanticipated project impacts* and agrees to fund such additional costs to a limit of USD 10,000,000 and any amount received from environmental insurance proceeds. To secure its obligations in respect of the unanticipated project impacts NTPC agrees to put in place a letter of credit of USD 2,500,000 within 30 days of the construction phase commencement. (CA Clause 30.9, 30.10 and 30.11).

- Where the CA is terminated before the Commercial Operations Date (“COD”) and before the satisfaction of the various social obligations to be met by COD the Company must make certain payments to the GOL to ensure certain resettlement obligations are satisfied. Such sum secured by a letter of credit of USD 1,000,000. These **termination obligations** are further described in Appendix A-2. (CA Clause 30.14).

3.6 THE NT2 PROJECT IN RELATION TO WORLD BANK AND ADB SAFEGUARD POLICIES

The NT2 Resettlement Policy details guiding objectives, principles and provisions under which resettlement is carried out. This NT2 Policy, and the Social Development Plan which has been drafted over many years, aims to follow the principles of the three applicable ('triggered') World Bank Policies:

- Operational Policy 4.12: Involuntary Resettlement.
- Operational Directive 4.20: Indigenous People.
- Operational Policy 4.11: Cultural Property.

More recently, the Asian Development Bank has also become a partner in the NT2 Project, and thus the ADB safeguards policies are also relevant to the social and resettlement program of the NT2 Project, including:

- ADB Policy On Involuntary Resettlement (1995) and Operations Manual(OM) F2
- ADB Policy on Indigenous Peoples(1998) and OM F3
- ADB Policy on Gender and Development (1998) and OM C2

NTPC and GOL are fully committed to comply with these World Bank and Asian Development Bank requirements and policies for indigenous peoples, involuntary resettlement, cultural property and gender and development.

These policies are set out in full in Appendix B.

3.6.1 WB OP 4.12: Involuntary Resettlement

The fundamental objective of Bank policy on resettlement as stated in OP 4.12 is to assure that development projects which must displace people also benefit them. To recall this overall objective, affected persons should be consulted from the beginning and special attention should be paid to socially or economically disadvantaged people. The NT2 policy states that the people affected by the Project should after relocation be better off than before. The resettlement plan is designed to achieve this. Policy objectives of the WB that have been applied to the SDP include:

- Involuntary resettlement has been avoided when feasible or minimized, exploring all viable project designs (2a)
- When resettlement is unavoidable, activities have been planned as “sustainable development programmes” that provide sufficient resources and opportunities to enable displaced persons to share the benefits of the project (2b).
- Ample assistance will be provided to displaced persons in order to improve their livelihoods and standards of living (2c)
- WB Safeguard Policy on Involuntary Resettlement is applicable due to loss of structure, land and livelihood of affected persons resided in the proposed reservoir or impacted directly by project activities (3a). In addition, there is “restricted access” to the NBCA to the north and east of the proposed reservoir, impacting the livelihoods of the displaced persons (3b). The proposed livelihood model that is explained in detail in Chapters 12-16 takes into account that resettlers will not have access or be reliant to resources in the NBCA.

The SDP also follows the measures outlined in Section 6 of OP 4.12:

- Displaced persons have been “informed about their options and rights”, “consulted on, offered choices among and provided with technically and economically feasible resettlement alternatives” and will be “provided with prompt and effective compensation” in the form of new livelihood system that will significantly exceed the value of their existing livelihood systems in terms of economic return and “at replacement cost for selected assets” (6a, i-iii).

- Assistance will be provided during relocation that exceeds moving allowances and housing; housing sites and agricultural land will be developed in co-operation with displaced persons; labour inputs and consultations on site preparations will take place in advance of the relocation (6b, i-ii).
- The SDP outlines a plan for “support after displacement, for the transition period, based on a reasonable estimate of time likely to be needed to restore their livelihood and standards of living” by establishing two targets to bring all households to the Lao rural poverty line four years after relocation and all villages to the national rural income level upon completion of the resettlement process (cf. Section 8.9.2).

The SDP covers all the elements of a SDP as prescribed in Annex A of OP 4.12, including a specific Resettlement Policy for the Project approved by GOL.

3.6.2 WB OD 4.20 Indigenous People

The WB's Safeguard Policy OD 4.20 is addressed in detail in the Ethnic Minorities Development Plan (EMDP) for the NT2 Project Area. The findings and recommendations of the EMDP have been incorporated into the SDP and are consistent with its policies and planned activities.

Indigenous peoples and ethnic minorities commonly have little voice in development decision making. Moreover, exploitation of their fragile resource base has largely profited others. Given that the reservoir population is made up of ethnic minorities, this SDP shows that they have had a voice in decision making and that development plans have been designed to respect their rights and reflect their cultural practices and traditions.

OD 4.20 sets out the prerequisites for culturally appropriate planning for development, including for resettlement as development. These include assuring that project staff (private and government) are familiar with the social, technical and legal aspects of proposed development activities; recognising traditional organisational structures, religious beliefs and resource use; using appropriate consultation methods that take advantage of local knowledge; focusing on production systems that suit the people's needs and environment; and avoiding increased dependency on project or government agencies by incorporating capacity building. The SDP follows these guidelines.

Households that currently live on the Nakai Plateau can be classified as indigenous people or ethnic minorities and have strong cultural ties to the area. All are sharing a common livelihood system. The focus on vulnerable groups needs to be on older people and others that may be disadvantaged, such as single parents.

The SDP has approached the indigenous peoples issue by planning that all proposed activities be “culturally appropriate development” and by giving specific consideration to the ‘local patterns of social organization, religious beliefs and resource use’ in the design of the plan's associated livelihood proposals. The plan also specifically aims at avoiding the creation of dependency and promotes self-management on the part of the resettlers.

3.6.3 WB OP 4.11: Cultural Property

Operational Policy OP 4.11 - Cultural Property - covers archaeological, historical, cultural, religious and natural values (environmental features). Studies that have been carried out previously in the project area have not revealed any significant loss of cultural property. However, a future more detailed study is now underway, and due to be complete by mid 2004 (see the EAMP) while provisions have been made however for “chance finds”, in co-operation with concerned GOL agencies as outlined in the EAMP.

3.6.4 ADB's Policy on Gender and Development

ADB's OM F2/OP requires that the findings of a gender analysis be included in the resettlement plan. The Policy requires:

- Gender sensitivity to observe how the project impacts women and men differently and to take account of their different needs and perspectives in resettlement planning;
- Gender analysis which refers to the systematic assessment of the project impact on men and women and on their economic and social relationships;

- Gender planning which refers to the formulation of specific strategies to bring about equal opportunities to men and women

Thus, the SDP has adopted gender “mainstreaming” as a key strategy for promoting gender equity. This entails ensuring the consideration of gender issues at all stages of the project and that women participate in the decision-making processes. A preliminary gender analysis has been conducted for the Nakai Plateau and the Xe Bangfai, and is currently being updated. This gender analysis and improvements to the strategy will ensure the following specific activities:

- Inclusion of gender sensitivity and capacity building for all stakeholders involved in the detailed design, implementation and monitoring and evaluation;
- Separate components for encouraging women’s participation;
- Integration of gender into livelihood planning and implementation, monitoring and evaluation, and all training programs
- Gender specific interventions such as targeting health programs, livelihood technical training to and land titling and land use rights to both men and women

3.6.5 Definition of Project Affected Persons

As per ADB policy, affected people (AP) include any person, household, firm or private institution who, on account of changes resulting from the Project, or any of its phases or sub-projects, will have its: (i) standard of living adversely affected; (ii) right, title or interest in any house, land (including residential, commercial, agricultural, forest, salt mining and/or grazing land), water resources or any other moveable or fixed assets acquired, possessed, restricted or otherwise adversely affected, in full or in part, permanently or temporarily; and/or (iii) business, occupation, place of work, residence or habitat adversely affected, with or without displacement.

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Annex 3-1: CA Revision of March 2005

Schedule 4 Part 4: Social component (Downstream Areas)

1 Definitions and interpretation

1.1 Concession Agreement definitions to apply

Words and expressions defined in the Concession Agreement shall have the same meaning in this Part, including:

Asian Development Bank, Commercial Operations Date, Company, Dam, \$, environment, environmental, Environmental and Social Objectives, Environmental and Social Plans, Financial Close, GOL, Limited by Scope Environmental and Social Objectives, Limited by Cost Environmental and Social Objectives, Nam Kathang River, Nam Phit River, Operating Phase, Overrun Allowance, Panel of Experts, Power Station, Project, Project Impacts, Project Lands, Reservoir, World Bank, and Xe Bang Fai River.

1.2 Definitions

Subject to clause 1.1 and unless the contrary intention appears, the following words have the following meanings when used in this Part:

Downstream Areas means the areas in which villages and communities may be potentially affected by the Project in the following zones:

- (a) the Xe Bang Fai River riparian area (from the confluence of the Nam Phit River and the Xe Bang Fai River down to the Mekong River) and those villages which may be influenced by the backwater effect upstream of this confluence;
- (b) the Nam Kathang River riparian area;
- (c) the hinterland area, including those areas where hinterland villages access the Xe Bang Fai River or Nam Phit River for fishing or collecting aquatic products; and
- (d) the area downstream of the Dam, including villages located in the vicinity of the Nam Theun River and its tributaries (Nam Phao River, Nam Kata River and Nam Ngoy River) and accessing the stretch from the Dam Site down to the Theun Hinboun Hydroelectric Project headpond for fishing or collecting aquatic products; and
- (e) those areas upstream of the Reservoir which may experience impacts on fisheries.

Downstream Areas Funding has the meaning given to that term in clause 4.2(a).

Downstream Fisheries Baseline has the meaning given to that term in clause 3.1(a).

Downstream Socio-economic Baseline has the meaning given to that term in clause 3.1(c).

Grievance Procedure has the meaning given to that term in Schedule 4 Part 1.

Implementation Plan has the meaning given to that term in clause 6.1(a).

Mitigation, Compensation and Resettlement Process means the planning, implementation and monitoring of mitigation measures and compensation entitlements and measures to mitigate against and/or compensate for the Project Impacts in the Downstream Area, including but not limited to provision of compensation for, and restoration of livelihood of, Project Affected Persons and mitigation of physical impacts in the Downstream Areas.

Mitigation, Compensation and Resettlement Provisions has the meaning given to that term in clause 5.2.

NT2 Resettlement Policy means the English translation of the NT2 Resettlement Policy attached as Attachment A to Schedule 4 Part 1 of the Concession Agreement.

Project Affected Persons or PAPs, for the purpose of this Part 4 means persons in the Downstream Areas, who on account of the execution of the Project, had or would have their: (i) standard of living adversely affected; or (ii) right, title, or interest in any house, land (including premises, agricultural and grazing land) or any other fixed or movable asset acquired or possessed, or otherwise adversely affected temporarily or permanently; or (iii) access to productive assets adversely affected, temporarily or permanently; or (iv) business, occupation, work or place of residence or habitat adversely affected, temporarily or permanently.

Resettlement Implementation Period for Downstream Areas has the meaning given to that term in clause 2(c).

1.3 Interpretation

- (a) In this Part:
- (i) references to clauses are to the clauses of this Part unless they are specified to be clauses of the Concession Agreement or of another Part or Schedule of the Concession Agreement;
 - (ii) references to this Part are to this Part 4 of Schedule 4 of the Concession Agreement unless they are specified to be some other Part or Schedule, including this Schedule 4, to the Concession Agreement;
 - (iii) the Attachments to this Part in all respects form part of this Part and any obligation or right of a party set out in an Attachment hereto is in all respects an obligation or right of that party under this Part;
 - (iv) if a provision of this Part is inconsistent with any provision of the Concession Agreement, the provision in the Concession Agreement shall prevail;
 - (v) if a provision of this Part is inconsistent with the NT2 Resettlement Policy, the provision in this Part shall prevail (unless the NT2 Resettlement Policy provides for a higher standard, in which case the NT2 Resettlement Policy shall prevail); and
 - (vi) subject to the preceding paragraphs in this clause 1.3, clause 48.2 of the Concession Agreement applies to the interpretation of this Part.
- (b) This Part 4 in all respects forms part of the Concession Agreement and any obligation or right of a party set out in this Part is in all respects an obligation or right of that party under the Concession Agreement.
- (c) Clause 30.4(b) of the Concession Agreement addresses the requirements of the parties as to the interpretation of the Environmental and Social Objectives and the extent to which regard may be had to the findings, reports and recommendations of the Environmental and Social Plans.

2 Scope of Mitigation, Compensation and Resettlement Process

- (a) This Part 4 contains the parties' obligations in respect of Project Affected Persons in the Downstream Areas.
- (b) For those persons who are Project Affected Persons due to their location on, or proximity to, Project Lands, their compensation entitlements shall be governed by Part 1 of Schedule 4.
- (c) The Mitigation, Compensation and Resettlement Process commenced prior to Financial Close and shall continue until the later of, the fifth anniversary of the Commercial Operations Date and the point in time when the Downstream Areas Funding has been exhausted (“**Resettlement Implementation Period for Downstream Areas**”).
- (d) Without limiting the role of the Panel of Experts under the Concession Agreement, the Panel of Experts will review the status of the objectives of the Mitigation, Compensation and Resettlement Process (as stated in clause 5.1) and the Mitigation, Compensation and

Resettlement Provisions (as stated in clause 5.2) six months prior to the conclusion of the Resettlement Implementation Period for Downstream Areas and provide a written report to the GOL and the Company.

3 Baseline surveys

3.1 Obligation to prepare and update baseline surveys

As at the date of the Concession Agreement, the Company agreed with the GOL to implement the following activities:

- (a) ensure that a five year baseline study is carried out by an experienced fisheries professional to quantitatively establish pre-Project fishery resources in the portions of the Downstream Areas which will be affected by the Project. The Company will furnish the results obtained in the study to the GOL on a regular basis and together they will agree on pre-Project baseline levels and varieties (“**Downstream Fisheries Baseline**”);
- (b) monitor and measure the fishery resources identified in the Downstream Fisheries Baseline and report on its findings to the GOL at least twice per year from the Commercial Operations Date until the end of the Resettlement Implementation Period for Downstream Areas;
- (c) commission a baseline socio-economic and health survey of those villages located along the Xe Bang Fai River. As part of this survey, the nutritional/livelihood importance of riverbank gardens and fisheries in the Downstream Areas shall be identified (“**Downstream Socio-economic Baseline**”);
- (d) update the Downstream Socio-economic Baseline within one year following Financial Close and within one year prior to the Commercial Operations Date; and
- (e) monitor and measure twice after the Commercial Operations Date (approximately two (2) years after the Commercial Operations Date and approximately four (4) years after commencement of the Operating Phase), the households’ socio-economic/health status identified in the Downstream Socio-economic Baseline, and report on its findings to the GOL.

4 Company’s obligation to develop and fund Mitigation, Compensation and Resettlement Process

4.1 Company’s obligation to develop the Mitigation, Compensation and Resettlement Process

In order to mitigate and/or compensate for the adverse impacts of the Project in the Downstream Areas, the Company has commenced, and will continue to develop, a comprehensive framework for the Mitigation, Compensation and Resettlement Process, which will focus on:

- (a) livelihood restoration to replace proteins and fisheries income losses;
- (b) restoration of domestic water supply and river crossing access;
- (c) replacement of irrigation pumps;
- (d) physical impacts mitigation, compensation, resettlement and rehabilitation; and
- (e) flood management,
and covering:
 - (f) services (studies, surveys, technical assistance, training and extension services, monitoring and evaluation (including independent monitoring services for GOL), capacity building);
 - (g) local consultations;
 - (h) goods;
 - (i) works;

- (j) operating and maintenance costs (including, for the avoidance of doubt, provision for GOL implementation budgets); and
- (k) required contingencies.

4.2 Company's funding obligation and principles for allocation of funds

- (a) The Company agrees with the GOL that it must contribute \$16 million to this Mitigation, Compensation and Resettlement Process to the benefit of Project Affected Persons, during the Resettlement Implementation Period for Downstream Areas ("**Downstream Areas Funding**").
- (b) The Company agrees that its obligations under clause 3.1 are Limited by Scope Environmental and Social Objectives up until Financial Close. After Financial Close, the Company's obligation to fund these activities will be covered by its obligation under clause 4.2(a).
- (c) The parties agree that the funding to be provided by the Company under paragraph (a) shall be allocated in accordance with the following principles:
 - (i) a maximum of 8 million will be available for disbursement in the period between Financial Close and the Commercial Operations Date;
 - (ii) the balance of the \$16 million must be disbursed in the period between the Commercial Operations Date and the end of the Resettlement Implementation Period for Downstream Areas, according to the needs of Project Affected Persons;
 - (iii) in the event the balance of the \$16 millions has not been disbursed in the period ending on the fifth anniversary of the Commercial Operations Date, the GOL and the IFIs, will jointly define the use of monies left to the benefit of Project Affected Persons in the Downstream Areas.
 - (iii) the detailed disbursement schedule for allocation of funds in the period from Financial Close to the end of the Resettlement Implementation Period for Downstream Areas will be formulated in the Implementation Plan and will be sufficiently flexible to be responsive to the needs of the Project Affected Persons in the Downstream Areas, in terms of frequency of disbursements and allocation of funds by program and by region.

5 General obligations of the parties

5.1 Objectives of the Mitigation, Compensation and Resettlement Process

The parties agree to take steps to reach the objectives of the Mitigation, Compensation and Resettlement Process in the Downstream Areas which are to:

- (a) ensure that all Project Affected Persons promptly receive their entitlements under clause 7;
- (b) at least restore livelihoods of Project Affected Persons in the Downstream Areas on a sustainable basis;
- (c) mitigate or compensate (at replacement cost) for the physical impacts from the Project on the Downstream Areas;
- (d) have the Project Affected Persons participate in the consultation, planning and design of the Mitigation, Compensation and Resettlement Process;
- (e) apply special measures as required towards ethnic minorities and vulnerable persons to take care of their needs and foster self-reliance;
- (f) comply with the NT2 Resettlement Policy.

5.2 Parties to comply with and implement the Mitigation, Compensation and Resettlement Provisions

The parties recognise that in implementing the Mitigation, Compensation and Resettlement Process, they need to, and they agree that they will comply with the following key principles ("**Mitigation, Compensation and Resettlement Provisions**"), namely that:

- (a) participation, cooperation, opinion, and advice from Project Affected Persons is essential to the Mitigation, Compensation and Resettlement Process and will be sought;
- (b) assistance from international experts is also essential to the Mitigation, Compensation and Resettlement Process and such experts will be engaged;
- (c) the social and cultural cohesion of villages will be protected;
- (d) traditional organisational structures, religious beliefs and resource use will be recognised and respected;
- (e) appropriate consultation and participation methods are to be used, utilising local knowledge in developing production systems that suit the Project Affected Persons' needs and environment and which results in a self-sustained livelihood;
- (f) the Mitigation, Compensation and Resettlement Process will be transparent; and
- (g) the provisions as stated in Articles 4 and 5 of the NT2 Resettlement Policy.

The parties agree to use their best endeavours to facilitate compensation, resettlement and restoration of livelihoods of Project Affected Persons in the Downstream Areas during the Resettlement Implementation Period for Downstream Areas, with the funding available for this program under clause 4.2.

6. Development of Implementation Plan

6.1 Preparation of Implementation Plan

- (a) The Company, in consultation with the GOL and with such input as the World Bank and the Asian Development Bank may wish to propose, and with due regard to the Social Development Plan, must prepare a detailed Implementation Plan for the Mitigation, Compensation and Resettlement Process (“**Implementation Plan**”).
- (b) The Company shall ensure that the Implementation Plan is carried out by suitably competent and expert persons who are acceptable to the GOL and that the Implementation Plan provides for at least the following matters:
 - (i) the extent of reasonably foreseeable impacts in the Downstream Areas;
 - (ii) principles for identification of Project Affected Persons;
 - (iii) meaningful consultation with, and participation of, Project Affected Persons;
 - (iv) the mitigation, compensation and resettlement measures to be implemented, taking into account their acceptability to the Project Affected Persons;
 - (v) any technical assistance which is required;
 - (vi) the proposed implementation schedule;
 - (vii) the monitoring indicators which will be used to assess the efficiency and appropriateness of the mitigation, compensation and resettlement measures (as well as the restoration of livelihoods of Project Affected Persons, to the extent possible);
 - (viii) detailed budgets; and
 - (ix) other matters required by the GOL.
- (c) The Company shall ensure that the Implementation Plan reflects the parties' intention that:
 - (i) the GOL and the Company will be jointly responsible for the design of the program; and
 - (ii) the Company will take responsibility for studies and designs.
- (d) The Company shall ensure that the Implementation Plan addresses the detailed implementation arrangements for the following Project Impacts:

Item	Issue	Description of Project Impact	Principle of compensation/mitigation program
1(a)	Assets and public facilities Riverbank protection against erosion (near temples)	Increased erosion might result in a risk for temples located next to the riverbank.	Since the villagers have expressed the preference not to move these temples, riverbanks will be protected, for instance, through the use of gabions.
1(b)	Assets and public facilities Assets relocation	Buildings close to the riverbank are put at risk by the possible increased erosion.	Buildings without community or cultural value will be relocated as close as possible to their original locations, in consultation with villagers.
1(c)	Assets and public facilities Irrigation pumps	Weekly water level fluctuations, due to the possible cessation of operation of the Power Station on Saturdays and Sundays, will require adjustments to the pump-to-supply connection, for the centrifugal pumps mounted on floating pontoons. Additional erosion may undermine the foundations of the steel pipe supports on the riverbank.	Pontoon pumps (and less likely axial pumps) will be relocated, as required. Required adjustment to connections systems (flexible hoses, electric wires and ropes) will be made. A warning system for unusual water level fluctuations will be designed for the various water users associations.
1(d)	Assets and public facilities Access across the Xe Bang Fai River	Higher water levels in the dry season will prevent people from crossing the river by wading across the rapids or by building temporary bamboo bridges.	The measures to be implemented will depend on consultations with villagers; they may include: <ul style="list-style-type: none"> • provision of boats and (“long tail”) engines • pedestrian bridges (possibly of the “suspended” type) • culverts (with load limit, excluding use by logging trucks)
2	Domestic water supply	Water quality in the Downstream Areas may be affected, due to the degradation of the biomass submerged in the Reservoir (especially during the first few years), and increase in suspended matter.	Alternative sources of domestic water of appropriate quality will be developed prior to the Commercial Operations Date. These sources will be developed for each village that relies on the affected river for more than 75% of its domestic water, and for the corresponding percentage of the population if this reliance is less than 75%.
3(a)	Livelihood impacts Fish and Aquatic Product (FAP) losses	A decrease in fish catch (and aquatic product collection) is probable, due to: <ol style="list-style-type: none"> (a) modification of habitats as a result of a longer dry season and some sedimentation of habitats; (b) probable decreased water quality in the early years; and (c) greater difficulty fishing in the higher/faster waters. 	The actual compensation program will depend largely on community consensus but shall be designed having regard to the objective of restoration of livelihoods and social and economic conditions of Project Affected Persons on a household basis. While the Project favours the development of direct alternatives

Item	Issue	Description of Project Impact	Principle of compensation/ mitigation program
		<p>In terms of biodiversity, while there are no endemic fish species in the Xe Bang Fai River, some species may be extirpated and others may flourish, and the aquatic biomass production should partially recover and stabilize after a few years.</p>	<p>to impacted livelihoods, such as “fish for fish”, some communities may request support for some type of irrigation, generally for integrated cropping and fish farming, which should not be problematic, as both these activities require the pumping of water.</p> <p>The compensation programme could be based on a mix of several options, combining fish raising (in rice fields and/or fish ponds), and chicken, pig, or cattle raising.</p> <p>The program will also aim to improve the management of the fish resources, in both the streams and the wetlands, as the current use of these resources is clearly not sustainable.</p>
3(b)	<p>Livelihood impacts</p> <p>Loss of riverbank gardens</p>	<p>Due to the water increase in the dry season, gardens located in the riverbed and on the lower part of the banks will no longer be cultivable.</p>	<p>When it is not feasible or productive to move the gardens to the upper part of the riverbank, the Company will provide assistance for re-establishing gardening and cropping activities, including, when required, acquisition of land and development of irrigation schemes.</p>
4	<p>Flooding on the lower Xe Bang Fai River</p>	<p>In the wet season, during moderate flood events, the additional discharge from the Project will increase the water level in the downstream area of the Xe Bang Fai River by an average of 35cm. This will cause an additional area to be flooded, and an increase in water level on the already flooded areas. Duration of submersion will be increased by an average of 3.6 days for this type of event.</p> <p>These changes may potentially benefit fish production, but impact rice crops.</p>	<p>The Company will consult with the villages and local authorities to review the review flooding, its causes (taking into account studies undertaken by the company) its impacts and beneficial uses, and current flood mitigation structures in the area, and devise an appropriate plan of action which may include (a) prevention of additional flooding by increasing the elevation of the existing dykes, (b) some repairs and new construction of flood management gates, (c) proper operation of all flood gates (d) natural fisheries management, (e) and introduction of submersion resistant varieties of rice</p>

6.2 Review, approval and updating of the Implementation Plan

The Company shall ensure that there is meaningful consultation with Project Affected Persons and villages during the planning and preparation of the Implementation Plan.

The Company must submit the Implementation Plan to the GOL and the Panel of Experts within twelve (12) months of the occurrence of Financial Close.

The GOL, with advice from the Panel of Experts, will review and approve the Implementation Plan prior to its implementation. The GOL may at its discretion give its approval subject to conditions.

In the event of any dispute between the parties as to how to allocate the funding referred to in this Part, either party may refer the matter to the Panel of Experts under clause 30.17(f) of the Concession Agreement.

The parties agree that the Implementation Plan will be reviewed and updated, as necessary, as actual impacts become known through monitoring after the Commercial Operations Date.

7 Program: Implementation Phase

7.1 Allocation of responsibility

- (a) The GOL and the Company will be jointly responsible for the implementation of the program, with the parties taking such responsibility as is allocated to them in the Implementation Plan.
- (b) The Implementation Plan must provide for, and the parties must ensure that, Project Affected Persons receive entitlements in accordance with the following table:

TYPE OF LOSS	ENTITLED PERSON	MITIGATION, COMPENSATION AND RESETTLEMENT MEASURES
1. PERMANENT LOSS OF LAND		
1.1: Permanent loss of residential land (home lot) and non agricultural/garden land	Documented owners (validated by village authorities) or recognized occupant users as at the cut off date identified in the Implementation Plan.	<p>Project Affected Persons (PAPs) will be entitled to compensation in cash or the provision of replacement land, as follows:</p> <ul style="list-style-type: none"> a) If the PAP wants replacement house plot land then they will be provided with replacement land of <u>at least</u> equal size and amenity to the lost land in a location acceptable to the PAP. In this case no cash will be paid. The land will be cleared and levelled at the expense of the Company. b) Such replacement land will be provided with access to a road, of at least equal amenity to the current access. c) If the current/lost land is also supporting a dwelling, then the PAP will also be provided with access to electricity. d) Such replacement land will be provided with full land title in the name of both husband and wife. e) If the owner wants cash compensation then the Company will pay for the land at its replacement value as estimated by the actual local market value at the time the compensation is actually paid. Those receiving cash for land must undergo financial management training. f) If the land is partially affected and the remaining landholding is sufficient to re-establish houses and structures, PAPs may opt to receive cash compensation for the affected portion of land and structures. g) If the land is partially affected and the remaining landholding is not sufficient to rebuild affected houses and structures, the Company will acquire the entire landholding. <p>Land disturbance allowance will be provided which is equivalent to 10% of the total compensation amount calculated for affected land.</p> <p>The Company shall meet any applicable registration and land transfer fees.</p>
1.2: Permanent loss of business	Documented owners (validated by village authorities) or	PAPs will be entitled to compensation in cash or the provision of replacement land, as follows:

TYPE OF LOSS	ENTITLED PERSON	MITIGATION, COMPENSATION AND RESETTLEMENT MEASURES
land	recognized occupant users, as at the cut off date identified in the Implementation Plan.	<ul style="list-style-type: none"> a) If the PAP wants replacement business land then they will be provided with replacement land of at least equal size and amenity in a location with comparable commercial advantage. In this case no cash will be paid. b) Such replacement land will be provided with access to a road, of at least equal amenity to the current access. The PAP will also be provided with access to electricity (brought to the land lot) and a full land title. c) Such replacement land will be provided with full land title in the name of both husband and wife. d) If the owner wants cash compensation then the Company will pay for the land at its replacement value as estimated by the local market value of the year in which compensation is paid in a similar situation of a non-affected village in the same district. e) If the land is partially affected and the remaining landholding is not sufficient to rebuild affected houses and structures, the Company will acquire the entire landholding.
1.3: Permanent loss of riverbank gardens and other agricultural land	Documented owners (validated by village authorities) or occupants identified as at the cut off date identified in the Implementation Plan.	<ul style="list-style-type: none"> a) For those PAPs whose crops and land are impacted and where the loss of productive land is more than 10% of the PAP's total productive capacity then compensation will be through provision of "land for land" of equal productive capacity and in a location satisfactory to the PAP. Land will be cleared, leveled and otherwise prepared for cultivation at the expense of the Company. b) Garden and field crops livelihood restoration program: <ul style="list-style-type: none"> (i) If land is available, the gardens shall be relocated on the same riverbank (at a higher level). (ii) If land is not available on the same riverbank, the following measures shall apply: <ul style="list-style-type: none"> (A) Extension of irrigation system to new land away from the riverbank if there is already an existing irrigation system in the village; or (B) Installation of a new water supply to irrigate new land if there is no irrigation system in the village. <p>In lieu of new pumping costs, additional land shall be provided.</p> c) Production assistance will be provided for at least 2 years to ensure that the replacement land actually and fully reaches the production targets. Production assistance is to consist of pumping cost, fertilizer, seed, and extension assistance. d) Where less than 10% of a PAP's total productive, income generating assets is lost, the PAP has the option to receive cash compensation for the lost portion of land at current market value of the land at the time of actual compensation. e) Land disturbance allowance will be provided which is equivalent to 10% of the total compensation amount calculated for the affected land. f) If the household includes a married couple, land title will be issued in the names of both the husband and the wife, if required by the PAP. g) The Company will meet any applicable registration taxes and land transfer costs.
2. TEMPORARY LOSS OF LAND		
2.1: Temporary	Documented owners	a) No compensation for land will be paid if returned to the original user.

TYPE OF LOSS	ENTITLED PERSON	MITIGATION, COMPENSATION AND RESETTLEMENT MEASURES
loss of agricultural, garden and residential land	(validated by village authorities) or recognized occupant users, as at the cut off date identified in the Implementation Plan.	<p>However, the Company shall pay rent in a lump sum immediately (10% of the replacement cost at current market value) to the PAPs.</p> <p>b) In addition, if crops or trees are lost, then further cash compensation for loss of crops and trees at market values and compensation for loss of net income from subsequent crops that cannot be planted for the duration of the lease will be paid to the PAPs.</p> <p>c) If the disruption continues for more than one year, the PAPs have an option to:</p> <p>(i) continue the temporary use arrangements; or</p> <p>(ii) sell the affected land to the Company at full replacement cost at current market value.</p> <p>d) Cash compensation will be paid to the PAPs for any damage to structures at replacement cost at current market value and for repairing structures.</p> <p>e) Extreme care shall be taken by contractors to avoid damaging properties. Where damage does occur, the Company shall pay compensation immediately to the PAPs. Damaged assets will be restored to their former condition.</p>

3. LOSS OF HOUSE AND OTHER FIXED ASSETS

3.1: Permanent loss of houses and other structures (rice stores, toilets, kitchens, etc.)	Documented owners (validated by village authorities) or recognized occupant users, as at the cut off date identified in the Implementation Plan.	<p>Compensation will be paid by the Company, in the form of cash, materials or a combination of both, without deduction for depreciation or salvageable materials, or service provided, for:</p> <p>a) The labour cost associated with the dismantling of existing housing and other structures.</p> <p>b) Transportation of dismantled housing and other materials to the new house lot (which are not, however, considered as materials to make up the minimum house standard).</p> <p>c) The provision of new materials for construction of the new house and other structures.</p> <p>d) The house materials are to be either:</p> <p>i) the minimum standard of wood walls and floors, tin roof and cement house footings; or</p> <p>ii) to the standard of materials as used in the current/lost housing, depending on the choice of the PAP.</p> <p>e) Construction of the new house and other structures or equivalent labour cost.</p> <p>f) House design to be approved by the PAP, but to be in general accordance with the original design.</p> <p>In addition, the following entitlements apply:</p> <p>a) Minimum housing area not less than existing area, or 14m² of construction area per person with a minimum total area of 42m² - whichever is greater, and depending on the choice of the PAP.</p> <p>b) Households with seven or more persons containing two families have the option to have two houses.</p> <p>c) Sheds, other outbuildings and fencing to be provided.</p> <p>d) If required by the PAP, a toilet and bathroom to be provided (all PAPs are entitled to them, but some may not want them).</p>
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TYPE OF LOSS	ENTITLED PERSON	MITIGATION, COMPENSATION AND RESETTLEMENT MEASURES
		<p>e) If the original house was connected to the electricity grid, the new house is to be provided with electricity supply and a minimum standard of electricity fittings.</p> <p>f) Access to a domestic water supply.</p> <p>g) For partially affected houses/structures, compensation will be paid equivalent to:</p> <ul style="list-style-type: none"> i) the replacement value of the affected portion based on current market value; or ii) the cost of repairing the property to its original or better condition. <p>h) Any PAP that is renting a house will be provided with assistance until another rental house is found and relocation is complete.</p>
3.2: Permanent loss of shops, other businesses	Documented owners (validated by village authorities) or recognized occupant users, as at the cut off date identified in the Implementation Plan.	<p>Compensation will be paid at full replacement cost sufficient for PAPs to build a new structure of equivalent size and standard, with equivalent amenities, in a location with comparable commercial advantage.</p> <p>Compensation will be paid for lost potential income during the transition period, based on the average income of the business over the last 6 months.</p> <p>Employees will receive cash compensation equivalent to wages for each day that they cannot work during relocation.</p> <p>Payment in kind is preferred. PAPs can exchange building materials for cash if they wish to reuse existing building materials or upgrade the type of structure.</p> <p>To avoid disturbance or loss of income, all shop owners will be given sufficient time to reconstruct /re-establish their shops to new sites before they are required to dismantle their structures and relocate.</p>
4. LOSS OF CROPS, TREES OR OTHER PRODUCTIVE ASSETS		
4.1: Fruit trees	Owner or person (validated by village authorities or identified in the Implementation Plan) with customary right to harvest.	<p>Compensation for fruit trees will be based on the type, age and productivity and the cost of production and rearing of trees. The following compensation will be payable:</p> <ul style="list-style-type: none"> a) a lump-sum amount to cover the maintenance and rearing of trees. b) compensation equivalent to the annual productive value, as should be determined for the next seven (7) years. <p>Two months notice will be given to PAPs to harvest crops before construction commences.</p>
4.2: Timber trees	Owner or person (validated by village authorities or identified in the Implementation Plan) with customary right.	Compensation will be based on the net present value of the felled or fallen trees.
4.3: Fish ponds	Owner or person (validated by village authorities or identified in the Implementation Plan) with customary right.	<p>Either:</p> <ul style="list-style-type: none"> a) Replacement fish pond of equal size and/or productivity and amenity, plus assistance to stock and feed fish for 6 months will be provided; or b) Lump sum cash payment equivalent to 7 years lost productivity of the fish pond will be made.

TYPE OF LOSS	ENTITLED PERSON	MITIGATION, COMPENSATION AND RESETTLEMENT MEASURES
		Two months notice will be given to PAPs to collect fish.
4.4: Garden and field crops	Owner of the crops.	For those PAPs whose crops are impacted, compensation will be paid for crops based on gross harvest income taking into consideration the cost of production and investment. Standing crops will be compensated at full replacement cost regardless of maturity of crops. Additional compensation will be paid for one year's agricultural production or more until replacement land is productive. Two months notice will be given to PAPs to harvest crops before construction commences.
5. LOSS OF COMMON PROPERTY COMMUNITY STRUCTURES		
5.1: Electricity and telecom lines	Community.	Electricity and telecom lines will be relocated or placed underground to maintain service.
5.2: Roads and tracks	Community.	Any roads or tracks impacted by the Project will be fully restored, or replaced by an alternative route. Any resettlement area will be fully serviced by roads of at least equivalent standard and amenity.
5.3: Irrigation pumps	Community.	Pump and pipe footings will be strengthened, as required. Pontoon pumps (and less likely axial pumps) will be relocated, as required. Required adjustment to connections systems (flexible hoses, electric wires and ropes) will be made. A warning system for unusual level fluctuations will be designed and implemented.
5.4: Temples threatened by increased erosion	Community.	Riverbanks will be appropriately protected, through gabions for instance, to avoid relocation.
5.5: Access across the river	Community.	The measures to be implemented will depend on consultations with villagers; they may include: a) Provision of canoes and simple ("long tail") engines; b) Pedestrian bridges (possibly of "suspended" type); and c) Round culverts and/or high box culverts (with load limit, excluding the use by logging trucks).
6. LOSS OF COMMON PROPERTY RESOURCES		
6.1: Loss of fish and aquatic products	PAPs affected by loss of income/protein from fish catch, as identified in the Implementation Plan).	PAPs are entitled to participate in livelihood restoration programs so as to ensure that their level of fish, protein and fisheries income lost, are at least restored to pre-Project levels. The fisheries and livelihood restoration program may include: a) Fish for fish aquaculture programs (such as integrated fish-rice farming, fish pond culture, and integrated livestock-fish farming); b) Development of alternative livestock production program; and c) Improved natural fisheries management option in rivers and wetlands.

TYPE OF LOSS	ENTITLED PERSON	MITIGATION, COMPENSATION AND RESETTLEMENT MEASURES
		<p>The level of income restoration programs required will be identified on a household by household and village by village basis through the Implementation Plan to be carried out.</p> <p>PAPs will be entitled to receive the full benefit of the technical assistance and extension services to be provided by the Company.</p>
6.2: Domestic water source	Communities and households currently dependent on the Xe Bang Fai River for domestic water.	<p>Provision of new water supply systems:</p> <p>a) For villages where domestic water supply dependence on the Xe Bang Fai River is 50% or above, the Company will provide a new water system for the entire village.</p> <p>b) For villages where domestic water supply dependence on the Xe Bang Fai River is less than 50%, provision of the new water system will be made to the corresponding percentage of the population of that village.</p> <p>Villagers will be offered open wells or deep wells depending on technical feasibility and community preference. Where feasible or required, a semi reticulated system will be provided.</p>
7. ALLOWANCES AND SPECIAL TRANSITIONAL MEASURES		
7.1: Disturbance allowance	Significantly impacted PAPs (those whose land or income is impacted by more than 10%).	Each person will be paid USD 15.
7.2: Materials transport allowance	All relocating PAPs with structures. All relocating tenants.	In kind assistance with vehicles and labourers will be provided.
7.3: Local labour preference	All households participating in the program.	The Company and the GOL will give preference to local village labour and contractors in the implementation of all programs.
7.4: Rental allowance	Tenants in rental properties adversely affected by Project Lands. Landlords whose rental property is adversely affected by Project Lands.	Six months rent (per household) at prevailing market rate will be paid. Six months rent allowance will be provided, to allow for rebuilding and finding tenants. Penalties will be paid for ending lease contracts early.
7.5: Business transition allowance	Owners of small businesses and shops identified during the Implementation Plan.	An allowance equal to six months income (as assessed for each business during the socio-economic survey referred to in clause 3.1).

TYPE OF LOSS	ENTITLED PERSON	MITIGATION, COMPENSATION AND RESETTLEMENT MEASURES
7.6: Special assistance	All relocating PAPs and PAPs severely affected by loss of productive (income generating) assets who are identified in the Implementation Plan.	Rice and protein supplements will be provided as required to Project Affected Persons to the extent that their food security has been impacted by the Project and not yet restored, as assessed by the village development committees, and confirmed by the District social welfare office. The rice and protein supplement shall be provided by the Company on a quarterly basis, according to needs.
7.7: Grievance entitlements	All PAPs.	All PAPs will have full access to the Grievance Procedure established under Part 1 of Schedule 4.