

# VOLUME 4 – CHAPTER 5

## POLICY AND LEGAL FRAMEWORK AND ENTITLEMENTS

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## **5 POLICY AND LEGAL FRAMEWORK AND ENTITLEMENTS**

While involuntary resettlement is not new to the Lao people - centuries of changing fortunes have seen villages and groups of villages 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 hydropower 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 people adversely affected 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 NT2 Project and previous experience on other hydropower schemes a number of pieces of legislation have been introduced to deal specifically with the NT2 Project. This legislation guarantees rights to those people who are to be adversely affected as a result of the Project, including their rights to land and forest, and their rights to be fully and adequately compensated for losses. 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 people adversely affected by the Project.

A full discussion of, and the text of key legal documents and instrument is provided in Volume 1, Chapters 3 and Appendix C and D.

### **5.1 NATIONAL LAWS AND LEGAL INSTRUMENTS RELEVANT TO RESETTLEMENT**

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 Constitution of 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 Assembly<sup>1</sup>, 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.

#### **5.1.1 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. Key articles include;

- ❖ 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.

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<sup>1</sup> 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).

- ❖ Article 14: The state protects and promotes all forms of state collective and individual ownership.
- ❖ Article 15: ... land, which is owned by the national community, the state ensures the right to use, transfer, and inherit it in accordance with the law.
- ❖ Article 22: Lao citizens, irrespective of their sex, social status, education, faith and ethnic group are all equal before the law.
- ❖ Article 27: Lao citizens have the right to freedom of movement and residence as restricted by 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.

### **5.1.2 The Land Law (21 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 Project areas. It is based on the Land Law of 1997 with minor amendments. Key articles include;

- ❖ 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.
- ❖ 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 7: Individuals or organizations are prohibited to squat on the land, and 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. (see article 65, below)
- ❖ 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 laborer in a family; and for fruit orchards and vegetable farming not to exceed three hectares, respectively, per one laborer 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 laborer in a family.
- ❖ 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 65. Term of Lease or Concession of Land. For specific economic zone and special economic zone, the maximum lease or concession term of the land shall not exceed seventy-five (75) years and may be extended on a case by case basis by approval from the National Assembly. Leases or concession of land area over ten thousand (10,000) hectares must be approved by the National Assembly. The determination of actual lease or concession term shall be subject to the features, size and conditions of each activity.
- ❖ 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. The location of the land for the NT2 Project suggests that the rights to use are primarily under the control of the Ministry of Agriculture and Forestry.

### **5.1.3 Land Titling Legislation**

To secure the tenure rights of the APs to their resettlement land, two issues must be addressed (a) the individual household rights to their homes and agricultural plots and (b) the communal rights of the villagers to the forest land. The Ministry of Finance is currently supported by the World Bank in its process of registration of land parcels in Lao PDR. This has focused primarily on municipal areas where the Land Titling Department systematically registers parcels of land in a town. The implementation of land titling program is guided by three Ministerial Directives: MD No. 996/MoF, 24 June 1998, MD No 997/MoF, 24 June 1998 and MD No. 998/MoF, 24 June 1998). The titling of agricultural and housing land for NT2 will be performed under the two first MDs, 996 and 997.

As described above, whilst the land within the Lao PDR is the property of the national community, individuals may have the right to use, transfer and inherit land. Land titles can be inherited, sold and be the subject of a court order (known as permanent assignment). It may also be leased or mortgaged (indefinite assignment). It is important to note that the legislation providing the registration flows through from the Land Law not the Forestry Law. The land title provides the owner with security of tenure for that land but it does not address the specific uses such land may be put to or classified as (for example agricultural or forestry land).

The NT2 Project, in conjunction with the Ministry of Finance intends to register the resettlement housing and agriculture land in the name of the individual households (if household is married, husband and wife's name shall appear on the title certificate) using the procedure based on the Ministerial Direction on Systematic Adjudication of Land Use Right No. 997/MoF.

According to the law, before a land title can be issued, the APs must show that they have a right to that land. However, this requirement will be forgone in the case of the NT2 Project.

### **5.1.4 Road Law (April 3, 1999)**

Article 19 of the road law states that if the road construction works in various classes need to use the land owned by a private person or by an organization having the right to use it by law, the owner of the land to be expropriated shall receive a reasonable compensation.

## **5.2 LEGAL FRAMEWORK OF NT COMPENSATION POLICY AND ENTITLEMENTS**

The NTPC and the GoL have developed compensation and livelihood restoration and improvement guidelines in the Nam Theun 2 Resettlement Policy and the Concession Agreement. These legal and policy documents were based on the then available GoL legislation and policies and the World Bank safeguards policies. More recently, the Asian Development Bank (ADB) safeguards policies have become relevant, as have the draft National policy and guidelines on resettlement. This Project Lands Resettlement Plan has been drafted and will be implemented in accordance with the revised Concession Agreement, World Bank and ADB safeguard policies, and the NT2 Resettlement Policy.

### **5.2.1 Nam Theun Resettlement Policy**

The Nam Theun Resettlement Policy (updated 12 July 2002) was issued by Lao PDR Committee for Planning and Cooperation as No. 1147/CPC. It outlines the basic principles and measures governing the resettlement of agricultural and forestry production areas and compensation to the population of the Nam Theun 2 Project zones, with the view of upgrading (in the case of plateau resettlement) and ensuring sustainable livelihoods. It provides for the participation of the population in the consultation, planning and design process of their new settlement and production areas. It also provides for the application of special measures towards ethnic minorities and vulnerable persons to assist them to take care of their needs and foster self-reliance.

Development of a resettlement policy specific to NT2 has taken place in parallel with the preparation of the draft national policy. The steps in the process of preparing a NT2 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 Panel of Experts and by International Advisory Group.
- 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 described below.

Key requirements outlined in the NT2 Resettlement Policy which are relevant to Project Lands include:

**Article 1: Objectives of the Resettlement Policy**, specifies that

- ❖ the project must upgrade and ensuring sustainable livelihoods;
- ❖ the population must participates in the consultation, planning and design;
- ❖ 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; and
- ❖ the resettlement and rehabilitation plans will be conceived and executed as specific development plans.

**Article 4, Compensation Policy**, specifies that

- 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.
- 4.4.3 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.
- 4.4.8 All persons that sustain a loss under the Project will be entitled to adequate and prompt compensation or replacement of assets lost.
- 4.5 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.

**Article 5**, specifies that

- 5.5: Insofar as changes in household economic activities are proposed, the replacement opportunities will recognise the ability and interest of the persons affected, new activities will be introduced on a sound economic basis, with risks identified and understood.
- 5.8 Proof of residency or traditional use from the Village administration is required to establish the right to compensation.

- 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.
- 5.13: Any host people affected by the resettlement program will be compensated according to the degree of the impact.

Thus, this Project Lands RP includes restoration of livelihoods for Project Lands PAPs and improvement of living standards and livelihoods for vulnerable groups. Host populations, if any, will be provided with the same benefits as resettlers, in terms of access to health and education services and irrigation.

### **5.2.2 Resettlement Committee Regulations**

While the NT2 Resettlement Policy (and more recently the Concession Agreement of 2002) 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. Thus, as detailed planning and implementation proceeds, Regulations will be passed by the Resettlement Committee, at the recommendation of the Resettlement Management Unit and NTPC. These regulations are executed by the Provincial Governor 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 have been recently drafted include:

- Agreement of the Provincial Governor (no. 726/PG.KM), as chairman of the RC, to change the census date of eligible plateau resettles. dated 27 October 2004;
- Regulations on land/assets registration and compensation, dated 15 September 2004; and
- Instructions (no. 257/PG.KM) of President of Resettlement Committee on Social Order Management and Small Trade during the NT 2 Project Construction Period, dated 26 November 2004.

Also issued at Central level has been :

- Prime Minister's Decision (No. 07/PM, dated 22.01.2005) on Allocation of Use Right of Land to Nam Theun 2 Power Company Limited and Affected People of Nam Theun 2 Project

Resettlement Committee regulations of relevance to the Project Lands programs which will be drafted and executed prior to Financial Close will include:

- RC Regulations on the process for issuing land title to the resettlers, and the endorsement of such land titles to ensure their non-transference during the resettlement process; and

- RC Regulations on the process of forest and land use planning and allocation in the resettlement area, including the identification and process for delimiting urban, peri-urban and agricultural areas;

### **5.2.3 National Resettlement Policy and Guidelines**

The GOL, through its agency STEA, is currently developing a comprehensive policy and set of technical guidelines for resettlement within the Lao PDR. Appendix C in Volume 1 has full text of the draft National Policy on Resettlement and Compensation (C9.1), draft Decree on Resettlement and Compensation (C9.2) and Technical Guidelines for Resettlement and Compensation (C9.3).

### **5.2.4 ADB and World Bank Operational Procedures**

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, Volume 1.

The most relevant Bank Procedure with regard to compensation affecting involuntary resettlement due to NT2 Project Land impacts is the WB's OP 4.12 and the ADB's OMF2, both on Involuntary Resettlement.

The overall objectives of the IFI's policy on involuntary resettlement are the following:

- (a) Involuntary resettlement should be avoided where feasible, or minimized, exploring all viable alternative project designs.
- (b) Where it is not feasible to avoid resettlement, resettlement activities should be conceived and executed as sustainable development programs, providing sufficient investment resources to enable the persons displaced by the project to share in project benefits. Displaced persons should be meaningfully consulted and should have opportunities to participate in planning and implementing resettlement programs.
- (c) Displaced persons should be assisted in their efforts to improve their livelihoods and standards of living or at least to restore them, in real terms, to pre-displacement levels or to levels prevailing prior to the beginning of project implementation, whichever is higher.

Both the ADB and the World Bank specify that compensation should be based on a "replacement cost" at the time of actual compensation, where replacement cost is the method of valuation of assets that helps determine the amount sufficient to replace lost assets and cover transaction costs.

For example, the **ADB Operations Manual: Bank Policy** states, in para 4 (iii) *"Replacing what is lost. If individuals or a community must lose all or part of their lands, assets, means of livelihood ... they will be compensated and assisted through replacement of land, housing, infrastructure, resources income sources and services, in cash and kind, so that their economic and social circumstances will be at least restored to pre project levels"*.

### **5.2.5 The Concession Agreement**

The specific obligations of NTPC, and to some extent the GOL, to undertake and achieve resettlement 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 PDR.

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 Project Land Resettlement Action Plan.

Under this 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 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 dealing with the resettlement 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: (i) Clause 30 and (ii) Part 1, Schedule 4 (Social Component).

#### **CA: Part 1, Schedule 4 (Social Component)**

Part 1 of Schedule 4 provides details of the obligations of both NTPC and the GOL, the duration of these obligations and institutions within NTPC and the GOL who are responsible for the process. It specifies that the monitoring of the resettlement process will be performed both internally by the Company and the GOL and also by independent parties..

Specific compensation and livelihood restoration entitlements for Project Lands impacts were specified in the Concession Agreement of October 2002, Schedule 4, Part 1, clause 14. However, these have been revised and the updated Concession Agreement will be issued in February 2005. The entitlement matrix (Section 5.4.2) is now integrated into the revised Concession Agreement.

### **5.3 ELIGIBILITY CRITERIA**

All those peoples or communities who have land, assets or seek a livelihood from any Project Land at the time that the Baseline Study Phase 2 is undertaken, are considered as eligible for compensation and rehabilitation. In the case of Project Lands 33, 34, 35, 36 this was June of 2004. For PCA Project Lands 1, 20a and 20b, 36 and 40 this was October 2004. For the rest of the Project Lands, this Baseline Study Phase 2 will be undertaken - and thus the cut-off date defined - between January to March 2005.

#### **5.3.1 AP/PAP – Affected Person/Project Affected Persons:**

Affected People/ Project Affected Persons (PAPs) are those persons and families affected or impacted by the Project, which in the case of Project Lands is those persons or families who have land, assets or derive some livelihood in those areas defined as Project Lands and thus required to be handed over to the NTPC/HC, temporarily or permanently.

By definition, it is these PAP who are entitled to any applicable compensation and rehabilitation. However, any particular land or assets may be related to more than one PAP. For example, when the land is owned by one PAP but used to gain a livelihood by another different PAP (who is usually paying some type of rent to the owner PAP) then there are two eligible PAPs for this one asset. Thus, eligibility is based on:

- (a) ownership; and
- (b) use.

Ownership may have various forms, from formal to informal. There are no formal "land titles" as such yet issued for land or assets in the Project Area. However, ownership is officially recognized in the Lao PDR by the registration of land and assets for the purposes of tax. Such tax registration certificates will obviously be recognized as proof of ownership.

In addition, and in the case where there are no tax registration certificates, customary use and ownership will be recognized, and this is usually well known in each village. However, in the case that there is a dispute as to the owner then it is up to the Village Grievance Committee, in the first instance, to decide or to resolve any issues relating to customary and traditional ownership and use right over a particular land or asset.

There may be cases where land or assets have recently been purchased for the specific intent of being applicable for compensation from the NT2 Project. Such cases are generally known by the community and reported to the NT2 Project. They will go before the Village or District Grievance committee for adjudication.

It should be noted that any particular PAP may (a) have land assets or livelihoods in more than one Project Land, and (b) have a range of land assets and livelihoods in any particular Project Land. This may particularly be the case in the Gnommalart plain area, where families may or could be affected by any of the LPAs of Regulating Pond and Regulating Dam, the Downstream Channel and/or the Transmission Lines. It is for this reason that each PAP will have a (PAP) Assets Registration Folder, a compilation of land and assets impacted by the Project.

### **5.3.2 PAV – Project Affected Villages**

In some instances, impacted land and assets are not able to be related to any particular PAP, but more to members of a village or community. This is often the case for forest products, grass and grazing lands and fishing areas, which are considered community rather than a private assets. In these cases it is most practical to identify the village as the eligible affected entity, and thus the term PAV. However, this term is used in at least two circumstances:

- (i) PAV is used to generally describe those villages containing persons or households who may or will experience some impact from the NT2 Project Lands acquisition and construction;
- (ii) Project Lands PAV also refers to those villages whose 'communities' (rather than persons) are impacted by Project Lands acquisition and construction, and for which compensation (for an impact on a community asset or land) will be applicable at the village level, not the family level.

### **5.3.3 Lands and assets to be compensated**

There are a range types of lands, assets and livelihoods, mostly rural, which have been identified as potentially impacted by the need to temporarily or permanently hand over Project Lands to the HCJV and NTPC, including the following;

**Table 5-1: Land and Assets to be compensated**

Assets Type	Description
<b>Household level assets</b>	
<b>Houses, and House Plots</b>	Primary residential property used by a household. Permanent structures of various size and materials, ranging from bamboo, wooden and brick/concrete, and from one to two stories, or at least 'elevated'.
<b>Farm buildings</b>	A range of buildings, including elevated huts for shelter, rice barns and storage buildings.
<b>Other buildings</b>	A range of buildings, including shops, which again may be bamboo, wood or brick, or Government buildings which may be of brick, but some may be wood, commercial properties and community buildings i.e. temples, schools, hospitals.
<b>Fishponds</b>	Ponds used and maintained for the purpose of catching fish.
<b>Irrigated paddy fields</b>	Paddy fields predominately used for growing rice under irrigated conditions. Production of two harvests per year is possible.

Assets Type	Description
<b>Rainfed paddy fields</b>	Paddy fields predominately used for growing rice under rainfed conditions. Production is limited to one harvest per year, in the wet season.
<b>Gardens</b>	Cultivated land used for annual and/or perennial vegetables and/or fruits. Gardens may be either (a) river or creek bank gardens, (b) gardens linked to an irrigation system, or (c) small kitchen gardens around a house, which may grow field crops, fruit crops and vegetable crops, or larger gardens growing fruit and other trees or semi perennial crops.
<b>Bamboo</b>	Bamboo clumps maybe either (a) planted, or more often (b) occur where there has been significant land use disturbance. Bamboo is an important economic plants, with many uses. Shoots are eaten while the stems are used for matting and building materials. The foliage can be used as animal feed.
<b>Shifting cultivation fields</b>	Areas used for shifting cultivation or in preparation for shifting cultivation, usually of sticky glutinous rice intercropped with maize, cassava, sugar cane, pineapple, etc. which may be currently cropped or lying in fallow.
<b>Community level assets</b>	
<b>Irrigation canals</b>	Note: Irrigation canals are not directly compensated, but are either rehabilitated to their original function, in-situ, or are part of the development of a new irrigated area.
<b>Forest – little disturbed</b>	Forests consisting of older mature trees exhibiting a continuous upper tree canopy (typical canopy width of 15 plus metres). A wide range of timber and non timber forest products may be gathered here.
<b>Forest – disturbed</b>	Secondary forest with a fragmented and disturbed upper tree canopy (width of trees canopy varies from 3 to 15 metres). Disturbed forest may contain remnants of little disturbed forest interspersed by past shifting cultivation (> 3 years) and logging. A wide range of timber and non timber forest products may be gathered here.
<b>Grassland</b>	Land permanently covered in grass, possibly interspersed with numerous small trees and scrub. Grassland is possibly used for gathering, hunting and grazing, while grass can also be used for thatching.
<b>Wetland</b>	Includes areas that may be seasonally covered by shallow water. Wetland may be vegetated with forest or grasses. Fish and amphibians are caught and aquatic products gathered.
<b>Cleared / barren land</b>	Cleared or barren land devoid of vegetation, and not included in village lands, access routes, or lands prepared for agricultural production.
<b>Village areas</b>	Village and ‘urban’ areas includes land that is being used for permanent settlements - where villagers primary rights of access and use. Houses will typically be built on village lands. Within the village this area is
<b>Access routes</b>	Vehicle roads and tracks, and non-vehicular village tracks that provide access to other villages, houses, land, forests and water assets, for example.
<b>Other community assets</b>	Other significant community infrastructure such as bridges, pipes, tanks, power lines, fences etc.

## 5.4 PRINCIPLES AND ENTITLEMENTS FOR COMPENSATION AND REHABILITATION

### 5.4.1 General Principles of Compensation and Livelihood Restoration

The underlying principle of the Nam Theun 2 Projects social program is that lost incomes will be fully compensated.

As a general rule, there are two main types of possible compensation;

- 1: payment of cash compensation for lost production, income or fixed assets; or

2: compensation by way of direct replacement, and/or by rehabilitation or income restoration

Preference will be given to land-based resettlement and livelihood strategies for PAPs whose livelihoods are land-based. Where land-based assets cannot be replaced with land, non-land based options build around opportunities for self employment will be provided in addition to cash compensation for land and other assets lost.

The compensation schemes being developed (Chapter 7) are based on entitlements as per the Entitlement Matrix table 5-2 below, which is integrated into the update Concession Agreement. However, choice of the compensation type will be reviewed with each PAP and PAV, and will depend on three main factors;

- (i) The significance of the impact, in relation to the remaining livelihood of the PAP family.
  - for example, if the impact is small (< 10 % of the PAPs total livelihood), then a 'cash' type of compensation is an acceptable option, although the use of this cash should also be managed;
  - if the impact is significant (that is, the impact would mean loss of more than 10 % of the families land and/or livelihood) then direct replacement or development of alternative livelihoods is the option that will be promoted.
- (ii) The concerns and proposals of the PAPs and PAV themselves. For example, if the impact is estimated to be more than 10 % of the PAP family's land and/or livelihood, yet they strongly request compensation in cash, then this will be seriously considered, on a case by case basis, by the District Grievance Committee.
- (iii) In cases where replacement, rehabilitation or relocation are not feasible or possible, due to lack of land or alternative income producing opportunities, then again cash compensation may be considered.

If cash compensation is appropriate, then the Project (GOL and NTPC) must ensure that this cash is used in an appropriate and productive manner, or even used directly to purchase useful or production inputs (eg, power tiller, buffalo, fish pond, etc).

If the "land for land", "livelihood for livelihood" or "asset for asset" compensation is the appropriate path to follow, then the project is obligated as follows:

- for houses, the same entitlement as the for Nakai reservoir resettlement, which is either (a) a house of minimum size of 14m<sup>2</sup> per person, and made of wood, or (b) if the size of original (impacted) house is larger than this, then at least the new house should be that size and of the same material;
- for other buildings, full replacement, as per original building, materials etc,
- for paddy, gardens, fish ponds etc, replacement land (with title) of equal productivity or replacement livelihoods

#### **5.4.2 PAP Entitlements for Project Lands Impacts**

The entitlements of people whose land, assets or livelihoods are affected by the Nam Theun 2 Project are detailed in the Entitlement Matrix Table 5.2 below.

Both male and female PAPs will be equally consulted and recognised, and negotiations and compensation payments and livelihood restoration program will be with both male and female head of each household.

Table 5-2: Entitlement Matrix - Project Lands

TYPE OF LOSS	ENTITLED PERSON	COMPENSATION AND REHABILITATION MEASURES	IMPLEMENTATION ISSUES
<b>1. PERMANENT LOSS OF LAND</b>			
1.1: Permanent loss of <b>residential land</b> (home lot)	Documented owners (validated by village authorities) or non-renting occupants identified during Baseline Study 2 (June 2004 to March 2005)	<p>Project Affected Persons (PAPs) will be entitled to compensation in cash or the provision of replacement land, as below:</p> <ul style="list-style-type: none"> <li>▪ 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 PAP. In this case no cash will be paid. The land will be cleared and levelled at the expense of the Company.</li> <li>▪ Such replacement land will be provided with access to a road, of at least equal amenity to the current access. If the current/lost land is also supporting a dwelling, then the PAP will also be provided with access to electricity.</li> <li>▪ Such replacement land will be provided with full land title in the name of both husband and wife.</li> <li>▪ If the owner wants cash compensation then the Project 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.</li> <li>▪ 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 affected portion of land and structures.</li> <li>▪ If the land is partially affected and the remaining landholding is not sufficient to rebuild affected houses and structures, the Project will acquire the entire landholding.</li> </ul>	<p>Those receiving cash for land must undergo financial management training.</p> <p>PAPs are exempt from any registration and land transfer fees.</p>
1.2: Permanent loss of <b>business land</b>	Documented owners or non-renting occupants identified during Baseline Study 1 and 2 (June 2004 –March 2005)	<p>PAPs will be entitled to compensation in cash or the provision of replacement land, as below:</p> <ul style="list-style-type: none"> <li>▪ If the PAP wants replacement business land then they will be provided with replacement land of <u>at least</u> equal size and amenity in a location with comparable commercial advantage. In this case no cash will be paid.</li> <li>▪ 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 [provided to the land lot] and a full land title.</li> <li>▪ Such replacement land will be provided with full land title in the name of both husband and wife.</li> <li>▪ If the owner wants cash compensation then the Project 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.</li> <li>▪ 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</li> </ul>	
1.3: Permanent loss of <b>Agricultural Land</b>	Documented owners with or without certificate but were cultivating have cultivated the land at the time of Baseline Survey 2.	<ul style="list-style-type: none"> <li>▪ Significantly affected farmers, i.e. who lose 10% or more of their productive (cash and imputed income generating) land assets, are entitled to replacement land and income rehabilitation measures, as follows: <ul style="list-style-type: none"> <li>(i) Land of the same type, and of a total annual productivity at least equal to the lost (average) annual productivity of the lost land; and</li> <li>(ii) Production assistance for at least 2 years to ensure that the replacement land actually fully reaches the production targets. Production assistance to consist of fertilizer, seed, extension assistance.</li> <li>(iii) where irrigated land is lost the replacement land must be irrigated.</li> <li>(iv) where rainfed land is lost, the replacement land may be rainfed or irrigated.</li> </ul> </li> </ul>	<p>Those receiving cash for land must undergo financial management training.</p> <p>APs are free from any taxes, registration and land transfer fees.</p> <p>Company will assist in clearing and preparing agricultural land as required.</p>

TYPE OF LOSS	ENTITLED PERSON	COMPENSATION AND REHABILITATION MEASURES	IMPLEMENTATION ISSUES
		<p>(v) Such replacement land will be provided with full land title in the name of both husband and wife.</p> <p>Where no replacement land is available, assistance to develop alternative forms of livelihood activity which will generate at least as much 'income' as the lost land generated.</p> <ul style="list-style-type: none"> <li>▪ In cases where a significantly affected farmer's, i.e. who lose 10% or more of their productive (cash and imputed income generating) land assets, is entitled to replacement land, and income rehabilitation measures, but request a lump sum cash payout instead, then this case will be considered by the District Grievance Committee, whose decision will partly depend on:               <ul style="list-style-type: none"> <li>(a) the PAP's ability to handle cash payment; and</li> <li>(b) the PAP's plan of what to do with the cash payment; etc</li> </ul>               The cash payment in this case will be based on the actual replacement cost of the land as assessed at the actual time of payment of compensation.             </li> <li>▪ In cases where less than 10% of a PAP's productive (cash and imputed income generating) land assets are impacted then cash compensation is applicable and will be based on the actual replacement cost of the land as assessed at the actual time of payment of compensation.</li> </ul>	
<b>2: TEMPORARY LOSS OF LAND</b>			
2.1: Temporary impacts during construction	Owners or non-renting occupants whose land (but not structures) is affected by construction activities	<ul style="list-style-type: none"> <li>• Extreme care shall be taken by contractors to avoid damaging properties. Where damages do occur, the project shall pay compensation immediately to pAPs. Damaged assets will be restored to its former condition.</li> <li>▪ No compensation for land if returned to original user. However, the Company shall pay monthly rent immediately (10% of the replacement cost at current market value, per month) to the PAPs</li> <li>▪ 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; and</li> <li>▪ If the disruption continues for more than one year, PAPs have an option to (i) continue the temporary use arrangements or (ii) sell the affected land to the Company at full Replacement cost at current market value.</li> <li>• Cash compensation for any damage to structures at replacement cost at current market value and for repairing structures</li> </ul>	
<b>3. LOSS OF HOUSE AND OTHER FIXED ASSETS</b>			
3.1: Permanent Loss of houses and other structures (rice stores, toilets, kitchens, etc.)	Owners/occupiers identified during Baseline Study Phase 2	<p>The same entitlement as for Nakai Resettlers for Housing and Other Structures applies, as follows</p> <ul style="list-style-type: none"> <li>• the labour cost associated with the dismantling of existing houses and other structures;</li> <li>• transportation of dismantled housing and other materials to new house lot (which are not however considered as materials to make up the minimum house standard);</li> <li>• The provision of new materials for construction of new house and other structures;</li> <li>• The house materials are to be either (a) the minimum standard of wood walls and floors, tin roof and cement house footings, or (b) to the standard of materials as used in the current/lost houses, depending on the choice of the PAP</li> </ul>	

TYPE OF LOSS	ENTITLED PERSON	COMPENSATION AND REHABILITATION MEASURES	IMPLEMENTATION ISSUES
		<ul style="list-style-type: none"> <li>• construction of new house and other structures or equivalent labour cost paid;</li> <li>• house design to be approved by the village and the PAP, but to be in general accordance with the agreed basic design;</li> <li>• minimum housing area not less than existing area or 14m<sup>2</sup> of construction area per person with a minimum total area of 42m<sup>2</sup> - whichever is greater, and depending on the choice of the PAP;</li> <li>• households with 7 or more persons containing two families have the option to have two houses;</li> <li>• sheds, other outbuildings and fencing to be provided;</li> <li>• if required by PAP, a toilet and bathroom to be provided (all PAPs are entitled, but some may not want)</li> <li>• house to be provided with electricity supply and a minimum standard of electricity fittings.</li> <li>• a domestic water supply with at least one well per 5 households; in Oudomsouk, wells will be provided in the short term, and the town water supply will be improved after reservoir inundation.</li> <li>• For partially affected houses/structures, compensation will be paid equivalent to a) the replacement value of the affected portion based on current market value, or b) the costs of repairing the property to its original or better condition.</li> </ul>	
	Tenants renting houses	Assistance to find another rental house and relocate	
2.2: Permanent Loss of Shops, Other Businesses	Owners/occupiers identified during the Baseline study 1 and 2.	<p>Compensation at full replacement cost sufficient for APs to build a new structure of equivalent size and standard, with equivalent amenities, in a location with comparable commercial advantage.</p> <p>Compensation for lost income during the transition period as described below.</p>	Payment in kind is preferred. PAPs can exchange building materials for cash if they wish to reuse existing building materials or upgrade type of structure.
<b>4. LOSS OF CROPS OR TREES, OTHER PRODUCTIVE ASSETS</b>			
4.1: Fruit Trees	Owner or person with customary right to harvest	<p>Compensation for fruit trees will be based on the type, age and productivity.</p> <p>(a) If the affected trees are young and have not started bearing fruits, a lump-sum amount to cover for the maintenance and rearing of trees.</p> <p>(b) In case the tree has already started bearing fruits, the annual productive value should be determined, and the compensation equivalent to seven years of annual production value.</p>	<p>Two months notice to APs to harvest crops before construction commences.</p> <p>Mass of fruit production depends on tree age as per IOL.</p>
4.2: Timber trees	Owner or person with customary usage rights	Compensation will be the NPV of the felled tree	
4.3: Fish Ponds	Owner or person with customary usage rights	<p>Either</p> <p>(a) Replacement fish pond of equal size and/or productivity and amenity, plus assistance to stock and feed fish for 6 months</p> <p>(b) lump sum cash payment equivalent to 7 years lost productivity of the fish pond.</p>	Two months notice to APs to collect fish.
4.4 Garden and Field Crops	Owner of the crops	<p>Compensation for any crop unharvested at the time of relocation.</p> <p>Additional compensation for one year's agricultural production or more until replacement land is productive.</p>	Two months notice to PAPs to harvest crops. Relocation during fallow season preferable.
<b>5: LOSS OF OTHER HOUSEHOLD INCOME SOURCES</b>			

TYPE OF LOSS	ENTITLED PERSON	COMPENSATION AND REHABILITATION MEASURES	IMPLEMENTATION ISSUES
5.1 <b>Wage laborers</b> in relocating businesses or in businesses temporarily affected during construction (such as reduced access)	Each wage laborer	Cash compensation equivalent to minimum wage for six months.	
5.2 Agricultural wage laborers	Each wage laborer	Cash compensation equivalent to minimum wage for six months.	
<b>6. LOSS OF COMMON PROPERTY COMMUNITY STRUCTURES</b>			
6.1: <b>Electricity</b> and telecom lines	Community	Relocate or place underground to maintain service.	
6.2: <b>Road and tracks</b>	Community	Full restoration, replacement by alternative route, or the new resettlement area fully serviced by road of at least equivalent standard and amenity	
6.3: <b>Irrigation channels</b>	Community	Full restoration, replacement, or the new resettlement area fully serviced by irrigation system and channel of at least equivalent standard and amenity	
6.4: <b>Water source</b>	Community	Full restoration, replacement by alternative water source, or the new resettlement area fully serviced by road of at least equivalent standard and amenity	
6.5 <b>Schools, health centers, other government buildings, bridges</b>	Community	Full restoration to original or better condition, or replacement if necessary at locations identified in consultation with affected communities and relevant authorities at no cost to the community.	
6.6	Oudomsouk town	The Company will undertake community planning and prepare and implement a design for a reorganized town, in consultation with local authorities and residents, to restore the town to its pre-project conditions or better.	
<b>7. LOSS OF COMMON PROPERTY RESOURCES</b>			
7.1: Loss of <b>NTFP</b> gathering areas	Villages who have had customary rights to the common property resource	<ul style="list-style-type: none"> <li>▪ In case where the loss of the NTFP gathering area represents more than 10 % of a village's NTFP gathering area, then a replacement NTFP area will be identified and allocated.</li> <li>▪ In case where alternative NTFP gathering area cannot be identified, then, depending on the preference of the village, the Company will either:                             <ul style="list-style-type: none"> <li>(a) provide funds and TA for the domestication of NTFPs; or</li> <li>(b) provide a lump sum cash payment to the village development fund equivalent to 7 years of the value of impacted (lost) NTFPs</li> </ul> </li> <li>▪ In case the loss represents &lt; 10 % of the village's NTFP gathering area, a lump sum cash payment will be made to the village development fund, equivalent to 7 years value of impacted (lost) NTFPs.</li> </ul>	If income loss is expected (e.g. irrigation, community forest, community grazing land, income from fishpond), the relevant authority that owns the resource (village, commune or district authority) is entitled to compensation for the total production loss (over 7 years); this compensation should be used collectively for income restoration measures and/or new infrastructure.
7.2: Loss of <b>firewood</b> and wood product gathering areas	Villagers who have had customary rights to the common property resource.	<ul style="list-style-type: none"> <li>▪ In case where the loss of the firewood gathering area represents more than 10 % of a village's firewood gathering area, then a replacement firewood area will be identified and allocated.</li> <li>▪ In case where alternative firewood gathering areas cannot be identified, then, depending on the preference of the village the Company will provide funds and TA for the establishment of firewood plots over a 2 year implementation period.</li> </ul>	
7.3 <b>Loss of fish and aquatic products</b>	Community	The loss of fish and aquatic products will be compensated either in cash or livelihood activities.	

TYPE OF LOSS	ENTITLED PERSON	COMPENSATION AND REHABILITATION MEASURES	IMPLEMENTATION ISSUES
<b>8. ALLOWANCES AND SPECIAL TRANSITIONAL MEASURES</b>			
<b>Disturbance allowance</b>	significantly impacted PAPS (those whose land or income is impacted by more than 10%)	USD 15 per person as in Plateau RAP	
<b>Materials transport allowance</b>	All relocating PAPS with structures All relocating tenants	In kind assistance with vehicles and labourers.	NTPC to hire PAPS and local transportation services, as labourers, where possible.
<b>Rental allowance</b>	Tenants	Six months rent at prevailing market rate.	Any penalties associated with ending lease early paid by government.
	Landlords.	Six months rent allowance. Payment of penalties for ending lease contract early.	To allow for rebuilding and finding tenants, plus to cover for any penalties that tenants would normally pay to break lease.
<b>Business transition allowance</b>	Owners of small businesses and shops identified in the IOL	An allowance equal to six months income.	Formal businesses to demonstrate income from tax statements. Informal businesses will be provided with the equivalent of minimum wage.
<b>Special Assistance</b>	All relocating PAPS and PAPS severely affected by loss of productive (income generating) assets who are identified during the baseline survey as being below the poverty line.  PAPS without adequate labour to assist with resettlement activities -	300,000 kip for each family below the poverty line.  300,000 kip for each family without sufficient labour resources to relocate.  Food security (rice and protein supplement) as required until households reach and can sustain the poverty line.	This is equivalent to one month's salary for the head of household which is assumed to be the time taken for moving which a family with none or little assets or savings and may be required to pay out of pocket expenses.  Entitlement is additive, ie poor families without sufficient labour receive 600,000 kip.  Regular internal monitoring will be essential and prompt delivery of food security as soon as it is needed. A special fund will be available to enable quick response.
<b>Grievance Entitlements</b>	All PAPS	Full access to the Grievance process, if and when required.	

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