

29 August, 2014

ADB Approves Loan for Dam in Laos Despite Key Safeguard Violations

Position Statement by International Rivers and Mekong Watch

On 14 August 2014 the Asian Development Bank (ADB) approved a US\$ 144 million loan for the construction of the Nam Ngiep 1 Hydropower Project, a dam which will be built on the Nam Ngiep River in central Laos. However, the ADB has yet to address serious concerns over safeguard violations already associated with this dam and risks becoming complicit in human rights violations as project construction gets underway. Given that the ADB has not been able to resolve unmitigated social and environmental impacts at other hydropower projects in Lao PDR receiving financial support from the bank, including the Nam Theun 2 Dam¹, the decision to move ahead with the loan to Nam Ngiep 1 is particularly questionable. In the context of the socially and environmentally unsound outcomes of financing the hydropower sector in Lao PDR², International Rivers and Mekong Watch urge the ADB to reconsider any future financing for large-scale hydropower-related projects in Lao PDR and to withhold the loan to Nam Ngiep 1 until all concerns over gaps in safeguard compliance have been addressed.

The 290 MW Nam Ngiep 1 Dam is being advanced by the Nam Ngiep 1 Power Company, a consortium comprised of Japan's Kansai Electric Power Company (45%), Thailand's EGAT International Company (30%) and the Lao Holding State Enterprise (25%). Over 90% of the power generated will be exported to Thailand. More than 3,000 people, who are primarily Hmong and Khmu, will have to involuntarily resettle to make way for the project. Specific safeguard violations in this case include the lack of understandable, accessible information provided to affected people during the consultation phase, the lack of freely given consent from affected people to resettle or relinquish land and the disregard for a precautionary approach.

Lack of Information about Project Impacts

Forest areas and cultivated lands that are relied upon by villagers for their food security are already being cleared to make way for access roads. However, villagers along the Nam Ngiep say they are yet to understand the full extent of expected impacts on the river upon which they rely for transportation, household needs and fishing. Uncertain about their future livelihoods, and those of their families, they want to know how water levels and quality will change, the predicted changes to the fish populations and what will happen to the riverbank gardens they cultivate. Although people living in the downstream and upstream areas of the proposed dam site have reportedly been told by representatives of the Nam

¹ Key issues raised by the most recent reports (2013/ 2014) of the *International Social and Environmental Panel of Experts for Nam Theun 2 Multipurpose Project* include lack of livelihood restoration achieved to date for households in the resettlement sites and downstream, unimplemented gender participation/equity targets, serious concerns over decline in fisheries downstream and the lack of long-term commitment to monitor such changes, widespread illegal timber extraction from the surrounding area and poor/failed management of the watershed area. In addition, research from International Rivers and Mekong Watch has revealed grievances amongst project affected villagers over failure to pay full compensation amounts, food security concerns amongst downstream villagers, poor quality water downstream and ongoing riverbank erosion, leading to losses of once cultivated areas.

²² See for example, the recent column in the New York Times by Jacques Leslie, entitled "Large Dams Just Aren't Worth the Cost" <www.nytimes.com/2014/08/24/opinion/sunday/large-dams-just-arent-worth-the-cost.html?emc=eta1&_r=0> (22 August 2014).

Ngiep 1 Power Company that they will not be impacted by the project, they remain skeptical and want to know what is expected to happen to the river water, water-table and riverbanks. Villagers also request more understandable information about coping with the project impacts, including emergency procedures in case of operational failure during and after dam construction, as well as sustainable livelihood measures. Until a comprehensive round of inclusive information sessions for all residents of each of the affected villages is conducted, the ADB's loan disbursement should be suspended.

Lack of Free Consent to Resettle or Relinquish Land

As per the UN Declaration on the Rights of Indigenous Peoples, to which Laos has formally endorsed, and the ADB's own safeguard policy statement, resettlement of Indigenous Peoples³ and the acquisition of their land should not be done without their free, prior and informed consent. Amongst the people interviewed by International Rivers and Mekong Watch, those who now have to give up their land or move to make way for Nam Ngiep 1 say that if they had a choice in the matter, they would want to keep the land. According to villagers in Ban Hatsamkhone, "Everyone was told by the government the project will be good for us. We cannot disagree in this situation."

As recently as June 2014, several submissions to the UN Periodic Review on Laos by international human rights organizations noted severe violations of freedom of speech, including banning information and statements considered contrary to national interests, as well as widespread harassment, intimidation and arbitrary detention of those who express their concerns about land acquisitions for development projects. Within this climate of impunity, there is no space for people to feel that they can fundamentally call a project like Nam Ngiep 1 into question.

During the village meetings noted and recorded by the ADB, as well as the Nam Ngiep 1 Power Company, people have reportedly had the space to debate about compensation packages and demand improvements in the scope of support offered for livelihood restoration. However, these discussions are all based on the premise of the project moving forward, and the assumption that there are no fundamental questions about whether the project should be built in the first place. The act of convening these meetings should not be interpreted as evidence that the ADB's safeguard requirements have been met, specifically with regards to meaningful participation of project-affected people and to identifying if consent has been given.

ADB's Poor Track Record of Ensuring Livelihood Restoration for Affected People

The ADB's failure to implement their own safeguard requirements, particularly in relation to involuntary resettlement, has been documented by its internal watchdog, the Compliance Review Panel (CRP). For example, in their recent report on GMS Railway Rehabilitation Project in Cambodia⁴, the CRP stated:

"Cases reviewed by the CRP showed a recurrent pattern of inadequate attention by ADB to addressing the resettlement, public communications, and disclosure requirements of its own policies in a timely, adequate, and responsive manner. There is an obvious need for an approach that incorporates these issues as an integral part of project formulation and implementation,

³ The Nam Ngiep 1 Power Company recognizes the Khmu and Hmong affected by their project as Indigenous Peoples (Social Development Plan for Nam Ngiep 1, April 2014, p.7).

⁴ CRP (January 2014). "Final Report on Compliance Review Panel Request No. 2012/2 on the Greater Mekong Subregion: Rehabilitation of the Railway Project in the Kingdom of Cambodia (Asian Development Bank Loan 2288 and Asian Development Bank Loan 2602/Grant 0187 [Supplementary])". para 259.

[http://compliance.adb.org/dir0035p.nsf/attachments/Cambodia-FinalReport-13Jan2014_OSEC%20Submission.pdf/\\$FILE/Cambodia-FinalReport-13Jan2014_OSEC%20Submission.pdf](http://compliance.adb.org/dir0035p.nsf/attachments/Cambodia-FinalReport-13Jan2014_OSEC%20Submission.pdf/$FILE/Cambodia-FinalReport-13Jan2014_OSEC%20Submission.pdf)

and that genuinely mainstreams them so that they are not treated as mere add-ons. The lack of adequate attention to these issues up-front in the project and in previous cases reviewed by the CRP has led to significant yet avoidable adverse social impact on mostly poor and vulnerable people. These people have suffered loss of property, livelihoods, and incomes, and as a result have borne a disproportionate cost and burden of the development efforts funded by ADB. In the final analysis, this case, as in previous cases, has resulted in avoidable higher transaction costs for government and ADB and significant risks to ADB's reputation."

In contrast to the opportunities taken by Cambodian villagers and NGOs to bring the above case to the attention of the ADB's CRP, the lack of political space for civil society in Laos means it will be nearly impossible for villagers to similarly raise any grievances at the CRP. As resettlement of the Hmong, Khmu and Lao families advances, we urge the ADB to take concrete measures towards the restoration of affected people's livelihoods, by applying the following recommendations of the CRP evaluation on the railway project⁵:

"Effective and genuine compliance with ADB's involuntary resettlement, environmental, and public disclosure policies can be achieved only when the public benefit and the interest of ADB projects include the livelihood enhancement and development of those vulnerable populations that are adversely affected by a project."

Disregard for A Precautionary Approach

The ADB has also failed to meet their own standards of ensuring projects will take a 'precautionary approach' in relation to environmental impacts and mitigation. Research from the Nam Theun 2 Dam⁶ demonstrates that the greenhouse gas emissions of the reservoir would be approximately equivalent to more than 550,000 tons of CO₂ per year. The significant depth of the reservoir and location in a steep valley gorge where thorough biomass clearance of primary forest will be nearly impossible means Nam Ngiep 1 may be even more prone to high greenhouse gas emissions than Nam Theun 2. As a result, the ADB's assertion that Nam Ngiep 1 will lead to "about 500,000 tons of carbon dioxide annually avoided in Thailand"⁷ is based on a faulty premise, since approximately the same or higher volumes of greenhouse gases will likely be produced per annum at the site of reservoir of Nam Ngiep 1 (excluding the greenhouse gas emissions produced during dam construction). It is also questionable how the proposed biodiversity offsets for Nam Ngiep 1 will achieve 'no net loss' to make up for the project-induced destruction of critical habitats and forest areas when there is a paucity of information collected to date for baseline and cumulative impact studies. In this situation, the ADB's claims that the project is a component of 'sustainable development' and will provide 'clean energy' are false and misleading.

Moving Forward

During the project implementation phase of Nam Ngiep 1, we urge the ADB management and staff to remain vigilant of safeguard violations. They will also need to take a proactive role in ensuring timely disclosure of all project-related environmental, social and economic studies, as well as making the commitments to affected people clear, understandable and accessible. Ensuring the sustainable restoration of affected people's livelihoods must be prioritized and should, at a minimum, include being prepared to offer reparations for losses incurred over the project life-cycle. The ADB must not relegate

⁵ *Ibid.* para 260.

⁶ A recently released study from Université de Toulouse researchers (Deshmukh et al., Aug. 2014) demonstrates that the reservoir of Nam Theun 2 is a significant source of greenhouse gas emissions.

⁷ Asian Development Bank (July 2014). "Report and Recommendation of the President to the Board of Directors: Proposed Loans – Nam Ngiep Power Company Limited/Nam Ngiep Hydropower Project (Lao PDR)", pp. 8.

these responsibilities to the Nam Ngiep 1 Power Company, but instead, as a project funder, must be wholly accountable for the consequences of Nam Ngiep 1.

The ADB's approval of a loan to Nam Ngiep 1 demonstrates that when offering significant support to the Lao hydropower sector, the bank's management is willing to turn a blind eye towards safeguard compliance. We take note of the leadership taken by the United States to instruct their executive directors at the ADB and other international financial institutions to oppose loans for the construction of large dam projects⁸, and the resulting situation that the loan for the Nam Ngeip 1 project did not pass unanimously during the meeting of the Board of Directors on 14 August. In the future, we hope that other executive directors will receive similar instructions from the respective member states represented on the board, and recommend the ADB urgently reconsider any investments that may be planned for the pipeline in large hydropower dams and associated facilities in Laos.

More information on Nam Ngiep 1 Project Concerns: <http://www.internationalrivers.org/node/8372>

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International Rivers is an international non-governmental organization working around the world to protect rivers, support the aspirations of people who depend upon rivers for their livelihoods and promote development alternatives that meet peoples' energy and water needs.

Mekong Watch is a Tokyo-based environmental non-governmental organization which monitors large-scale development projects in Mekong River basin, especially those involving Japanese public and private funds.

⁸ According to the 2014 Consolidated Appropriations Act, "The Secretary of the Treasury shall instruct the United States executive director of each international financial institution that it is the policy of the United States to oppose any loan, grant, strategy or policy of such institution to support the construction of any large hydroelectric dam (as defined in "Dams and Development: A New Framework for Decision-Making," World Commission on Dams (November 2000)).