Expanding Failure

An assessment of the Theun-Hinboun Hydropower Expansion Project's compliance with Equator Principles and Lao law

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Executive summary

"Theun-Hinboun Power Company (THPC) did not appropriately compensate for the existing project and we are already poor. With the expansion project, THPC will make us poorer!"

–Tha Village (Hai River) interviewee

The Theun-Hinboun Expansion Project, currently under construction in central Laos, is a dam and diversion project that will displace 4,186 mostly indigenous people from their lands in the reservoir area and displace or negatively affect another 51,441 people living downstream, on project construction lands, and in resettlement host villages (THPC 2008, Executive Summary: 14). The project is an extension of the existing Theun-Hinboun Hydropower Project and will double water diversions down the Hai and Hinboun rivers, significantly increasing the frequency and duration of flooding, causing even greater erosion along the riverbanks, and almost completely decimating fisheries in the Hinboun River, according to the project's Environmental Impact Assessment and Resettlement Action Plan. The increased flooding along the Hai and Hinboun rivers will make life unbearable for many residents.

The existing Theun-Hinboun Hydropower Project has negatively affected around 30,000 people in at least 66 villages along the Hai, Hinboun and Theun-Kading rivers. The project has caused erosion and flooding in the Hai and Hinboun river basins leading to loss of land and riverbank vegetable gardens. Fisheries have been decimated in the downstream rivers. Many villagers have abandoned wet season rice fields because the floods have made rice cultivation unviable. In violation of Lao law, the Theun-Hinboun Power Company has failed to address most of these impacts or pay adequate compensation to affected communities.

The Theun-Hinboun Expansion Project started construction in 2008 and is expected to be completed in 2011. For the US$665 million project, THPC received financing from the Export-Import Bank of Thailand; three international private banks that have signed onto the Equator Principles[1]: ANZ Banking Group (Australia), BNP Paribas (France), KBC (Belgium); and four Thai banks: Bank of Ayudhya, Kasikorn Bank, Siam City Bank and Thanachart Bank. The Theun-Hinboun project is owned by the state utility Electricité du Laos, the Norwegian state-owned energy company Statkraft and GMS Power of Thailand, who together comprise the Theun-Hinboun Power Company (THPC).

In May 2009, BankTrack and International Rivers visited the project area over a period of four days to assess the project's compliance with the Equator Principles and Lao legislation. We found that **the project is in violation of Lao government resettlement law and the Equator Principles in numerous instances**. We also found that **the Theun-Hinboun Power Company**

[1] The Equator Principles are voluntary standards for financial institutions to manage environmental and social risk in their project finance transactions. The *Equator Principles* are based on the International Finance Corporation (*IFC*) performance standards on social and environmental sustainability. See www.equator-principles.com.

is failing to comply with its Concession Agreement and Resettlement Action Plan (RAP). These violations are unacceptable for a project that claims to be adhering to international standards, and that is being financed by three commercial banks that have adopted the Equator Principles.

Of most concern are the plans for resettling large numbers of people living downstream along the Hai and Hinboun rivers who will be affected by project-induced flooding. In an apparent effort to avoid adhering to Lao law and the Equator Principles, THPC calls this resettlement "relocation", somehow implying that resettlement standards don't apply. According to THPC, "relocation" is deemed a milder disruption than "resettlement", even though many thousands of people will have to move their houses as a result of project-induced flooding, meaning that the International Finance Corporation's Performance Standard 5 applies for those private banks that have adopted the Equator Principles.

There is still no detailed plan for how many people will need to move in the downstream areas and where they will move to, nor is there a detailed cost estimate or provision of a budget for resettlement in the downstream areas. There is no clarity as to whether land is available for all the villagers that will need to move, nor where that land is located. In violation of the Equator Principles, THPC has not provided a range of options for replacement housing for the resettled families in the downstream areas, nor have they established clear monitoring mechanisms to ensure that resettlement is done in compliance with the Equator Principles and Lao law. In addition, THPC is failing to provide a food allowance and other assistance to the displaced persons, in violation of the Decree on the Compensation and Resettlement of the Development Project in Lao PDR (referred to as the Lao Resettlement Decree).

For those displaced by the new reservoir, the Theun-Hinboun Power Company is not providing land-for-land compensation as required under the Lao Resettlement Decree. In addition, the company is failing to comply with commitments made in its Concession Agreement and Resettlement Action Plan regarding land and forest allocation and provision of food support to resettled families.

In summary, the project is in violation of the *Decree on the Compensation and Resettlement of the Development Project in Lao PDR* in the following aspects:

- Compensation for loss of assets and livelihoods in the downstream villages as a result of the original Theun-Hinboun Project has not been paid [Violation of *Article 6*],
- No entitlement to food allowance and relocation assistance for those being resettled in the downstream areas [Violation of *Articles 6 & 7*],
- No detailed cost estimate for resettlement in the downstream areas [Violation of *Article 14*],
- No "land for land" compensation for those displaced by the new reservoir [Violation of *Article 6*], and
- No provision of a food allowance and development assistance to those families in the reservoir area who have opted for self-relocation [Violation of *Articles 6 & 7*].

The violations of the Equator Principles are:

- No provision of a range of resettlement options to the downstream villagers [Violation of *Performance Standard 5*],
- Failure to establish clear monitoring mechanisms in the downstream areas [Violation of *Performance Standard 1*],
- No documentation on "good faith negotiations" with the affected indigenous communities [Violation of *Performance Standard 7*],
- No documentation on the affected indigenous communities' land use [Violation of *Performance Standard 7*], and
- No plan to provide periodic reports to the affected communities that describe progress with implementation of the Resettlement Action Plan [Violation of *Performance Standard 1*].

The violations of the Concession Agreement and the Resettlement Action Plan are:

- No allocation of forage plot, plantation land, share of the community forest, and non timber forest product (NTFP) garden to each household relocated in the reservoir area;
- No provision of 440 kg of milled rice per person per year for the displaced persons in the reservoir area during the transition period; and
- No provision of year-round access roads to the new resettlement areas.

In order to ensure that the serious problems facing the affected communities are being resolved and to bring the project into compliance with the national laws of Lao PDR and the Equator Principles, we recommend that **ANZ, BNP Paribas, and KBC undertake the following actions**:

1) The banks should conduct a mission to the project site to review the social and environmental impacts of the project and the food security of the affected communities, and assess the project's compliance with Lao law and the Equator Principles;
2) After the mission, ANZ, BNP Paribas and KBC should engage with THPC to ensure that the company brings the project into compliance with Lao law and the Equator Principles, and specify a strict timeframe for doing so; and
3) In line with the provisions in the Equator Principles, the bank consortium should withhold disbursements to THPC until the project is brought into compliance.

We also recommend that **Statkraft should undertake following actions**:

1) Statkraft should take immediate steps to engage with THPC to ensure that the project is brought into compliance with Lao law, the Equator Principles, and the project's own Concession Agreement and Resettlement Action Plan;
2) Measures to bring the project into compliance should be undertaken within a strict timeframe. Information about this should be shared with stakeholders; and
3) If Statkraft is unable to use its position in THPC to ensure the project is brought into compliance, the company should reconsider its involvement in THPC and consider selling out entirely.

Introduction and history

In May 2009, BankTrack and International Rivers conducted a four-day site visit to the areas affected by the Theun-Hinboun Expansion Project to assess the project's compliance with the Equator Principles and the national laws of Lao PDR**.** This report documents the results of the field trip and subsequent analysis. The report focuses on two geographic areas: downstream along the Hai and Hinboun rivers, and the reservoir resettlement areas. It also contains findings on the environmental management of THPC. Due to a lack of time, the team was unable to visit villages living along the Kading River downstream of the existing dam who are also affected by the project.

About the project

The Theun-Hinboun Expansion Project (THXP), currently under construction in central Laos, is a dam and diversion project that will displace 4,186 mostly indigenous people from their lands in the reservoir area and displace or negatively affect another 51,441 people living downstream, on project construction lands, and in resettlement host villages (RAP, Executive Summary: 14). The project is an extension of the existing Theun-Hinboun Hydropower Project.

Box 1: Project timeline

1998	Theun-Hinboun Hydropower Project completed
2000	Ten--year Mitigation and Compensation Program developed
2004	Independent review of Environmental Management Division conducted.
2008	Construction on Theun-Hinboun Expansion Project commenced
2009	Resettlement of reservoir villages started. (-2010)
2009	Resettlement of downstream areas started (-2011)
2011	Commercial operation begins

The existing project is a trans-basin diversion that diverts water from the Theun-Kading River into the Hai and Hinboun river basins. Ninety-five percent of its power is exported to Thailand. The Theun-Hinboun project is owned by the Government of Lao PDR (GoL), the Norwegian state-owned energy company Statkraft and GMS Power of Thailand, who together comprise the Theun-Hinboun Power Company (THPC). The Asian Development Bank loaned $60 million out of a total cost of $260 million to the Lao Government for its equity share of the project and the Nordic Development Fund loaned another $7.3 million (IRN 1999: 15). The Swedish and Norwegian governments provided some $70 million in government-guaranteed loans from Nordic financing institutions (Pahlman 2000). When the Theun-Hinboun project was first proposed in 1994, groups in Thailand, Norway and other countries warned that it would have significant negative impacts on affected communities. Yet these warnings were ignored. The company made little effort to study the impacts on downstream communities and collected no baseline data.

Soon after project operations began in 1998, NGOs uncovered significant detrimental impacts from the dam on local communities. About 25,000 people from 57 villages downstream and upstream of the dam had experienced declines in fish catches of 30-90%, the destruction of vegetable gardens and dry-season drinking water sources, loss of fishing nets, and increased

difficulties with transportation. Today the number of affected people has risen to 30,000 in at least 66 villages along the Hai, Hinboun and Theun-Kading rivers (International Rivers 2008: 36). The project has caused erosion and flooding in the Hai and Hinboun river basins. Many villagers have abandoned wet season rice fields because the floods have made rice cultivation unviable. The flooding has also caused water contamination, livestock deaths and other hardships for villagers living downstream. Water fluctuations have reportedly resulted in the deaths of several people due to unannounced sudden water releases from the dam (FIVAS 2007: 7 & 16).

Figure 1: Women in Sopkhom Village

After several years of sustained pressure from NGOs, in 2000 THPC admitted the impacts caused by the project and promised to spend up to $4.5 million on a Mitigation and Compensation Program. While this program has been successful in meeting some of the infrastructure needs of the affected communities, it has failed to restore lost livelihoods. In 2004, an independent review of the Mitigation and Compensation Program raised concerns about its long-term sustainability and issued a series of recommendations, most of which were ignored by THPC (FIVAS 2007: 7-8).

Although the Theun-Hinboun project has made affected villagers poorer, it has generated windfall profits for its shareholders. Located downstream from the Nam Theun 2 Hydropower Project, Theun-Hinboun's earnings were boosted by the long delays in Nam Theun 2's implementation. According to the *Vientiane Times*, THPC has earned approximately $570 million over the project's 10 years of operations (Vientiane Times 2008).

To make up for the reduced water flows on the Theun River caused by Nam Theun 2 and to increase profits, THPC is now building a new 65-meter-high dam on the Gnouang River, a tributary of the Theun-Kading River, to store water in a reservoir for release in the dry season. The Theun-Hinboun Expansion Project (THXP) will double diversions down the Hai and Hinboun rivers, significantly increasing the frequency and duration of flooding, causing even greater erosion along the riverbanks, and almost completely decimating fisheries in the Hinboun River, according to the project's Environmental Impact Assessment and Resettlement Action Plan. The increased flooding along the Hai and Hinboun rivers will make life unbearable for many residents.

Financing

The Theun-Hinboun Expansion Project started construction in 2008 and is expected to be completed in 2011. For the $665 million project, THPC received financing from the Export-Import Bank of Thailand; three international private banks that have signed onto the Equator

Principles: ANZ Banking Group (Australia), BNP Paribas (France), KBC (Belgium); and four Thai banks: Bank of Ayudhya, Kasikorn Bank, Siam City Bank and Thanachart Bank.[2]

Current status of the project

At the time of BankTrack's and International Rivers' visit to the project area in May 2009, construction on the expansion project had already commenced. Two villages, Somboun and Phabang, out of eleven villages to be moved from the reservoir area, had started to move to the resettlement site in Nongxong Village. Other villages in the reservoir area are scheduled to move sometime between 2009 and 2011 according to the Sopkhom Village headman. Most of the villagers we interviewed did not know about the detailed compensation and mitigation plans for the affected communities.

All the downstream villages along the Hai and Hinboun rivers we visited reported that they were scheduled to move sometime between 2009 and 2011. Most of them still do not know about resettlement and compensation plans, and feel that they have not received enough compensation for their losses from the existing project.

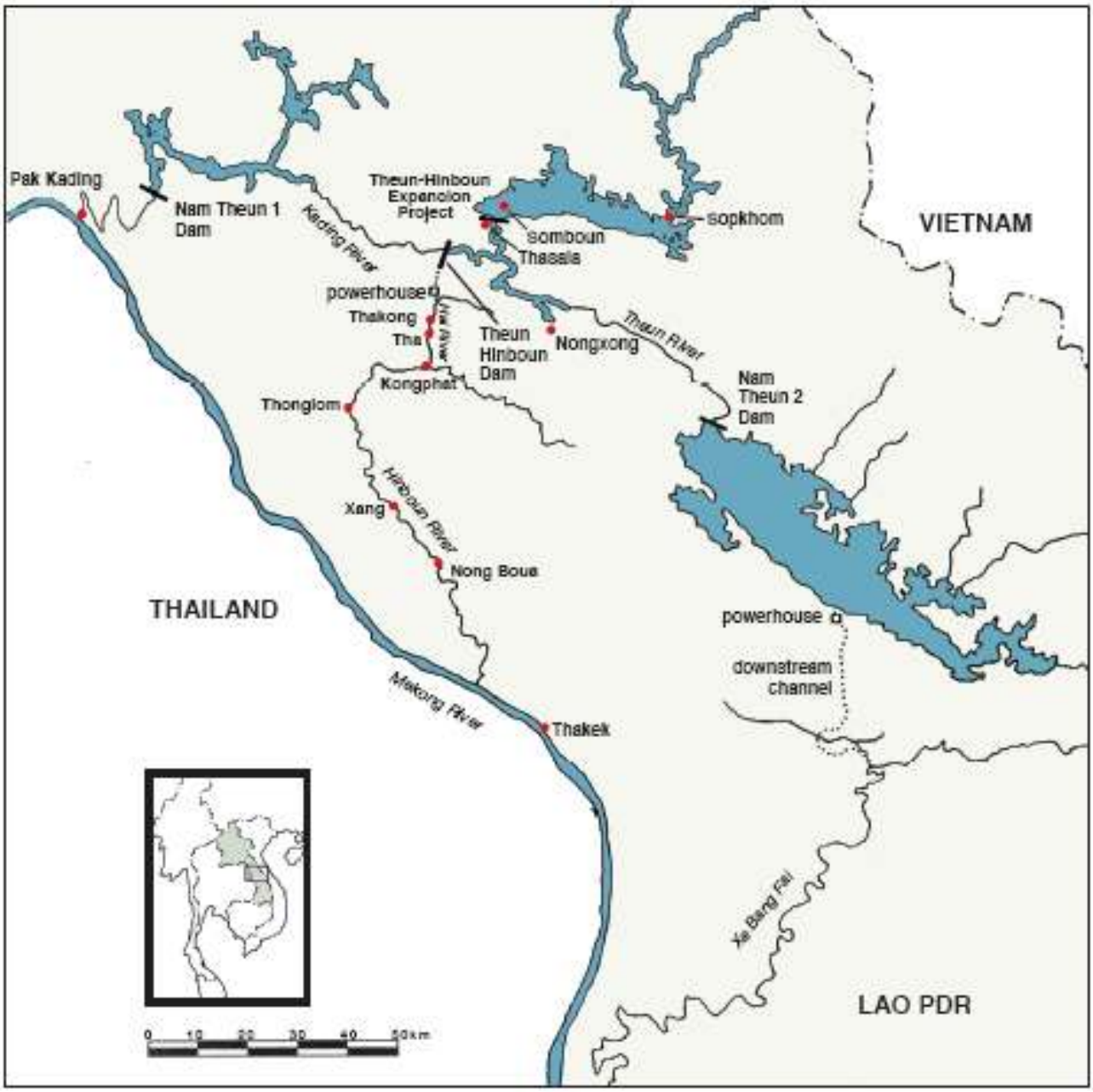
Methodology

BankTrack and International Rivers visited the following villages during our trip: two villages in the reservoir area that will be resettled, Somboun and Sopkhom villages; one resettlement host village, Nongxong Village; one village affected by project construction activities (also known as Project Lands), Thasala Village; and six villages downstream along the Hai and Hinboun rivers, Thakong, Kongphat, Tha, Thonglom, Xang, and Nong Boua villages. . This report is based on the field trip, a meeting with the General Manager of THPC in May 2009, and a written response from THPC to International Rivers' questions. The trip schedule is included in Annex 2.

Equator Principles and IFC's Performance Standards

The Equator Principles are voluntary standards for financial institutions to manage environmental and social risk in their project finance transactions, and were established in 2003. The Equator Principles are based on the International Finance Corporation (IFC) Performance Standards on social and environmental sustainability. Equator Principle 3 states that *"the Assessment will refer to the then applicable IFC Performance Standards and the then applicable Industry Specific EHS Guidelines"* of the World Bank Group (Equator Principles 2006). The Performance Standards clearly state that *"[i]n addition to meeting the requirements under the Performance Standards, clients must comply with applicable national laws, including those laws implementing host country obligations under international law" (Performance Standard Introduction, paragraph 3)*(IFC 2006). Thus, compliance with relevant national law is a requirement of the Performance Standards.

[2] In October 2008, the ANZ, BNP Paribas, and KBC participated in a US$187.5 million syndicated loan arranged by Exim Bank of Thailand. The four Thai banks participated in a 13,940 million baht syndicated loan also arranged by the Thai Exim Bank. Exim Bank of Thailand also provided a US$100 million project finance loan. (Exim Bank of Thailand Press Release, October 8, 2008)


Pak Kading
Nam Theun 1
Dam
Kading River
Theun-Hinboun
Expansion
Project
Somboun
Thasala
Sopkhom
VIETNAM
powerhouse
Thakong
Tha
Hinboun River
Theun
Hinboun
Dam
Nongxong
Theun River
Kongphat
Thongiom
Nam
Theun 2
Dam
Xang
Hinboun River
Nong Boua
THAILAND
powerhouse
downstream
channel
Mekong River
Thakek
Xe Bang Fai
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0 10 20 30 40 50km

Findings

A. Downstream Along the Hai and Hinboun Rivers

> *"If the government wants to help us to develop, we follow them. But if our government wants to make us poorer, we have to follow."*
>
> —Thakong Village (Hai River) interviewee

According to the Resettlement Action Plan (RAP), 72 downstream villages will be affected by the expansion project (6,412 households, 37,046 persons) (THPC 2008, Part 3: 16). Most of the households in the downstream areas practice paddy rice cultivation and upland swidden cultivation and have more than one hectare of paddy land (THPC 2008, Part3: 23).

1) Outstanding compensation for loss of livelihood in the Hai and Hinboun rivers

The Decree on the Compensation and Resettlement of the Development Project in Lao PDR (July 2005) (hereinafter referred to as the Lao Resettlement Decree) prohibits a project from initiating any new land acquisition before all previous claims and issues have been resolved. According to the decree, "*All previous claims and unresolved issues related to tenure status and ownership of land and other assets affected by the sub-project or components shall be resolved prior to initiating any new land acquisition measures on the respective sub-project or component" (Article 6, paragraph 8).* **The Theun-Hinboun Expansion Project is in violation of this decree.** As documented below, more than a decade after the original project commenced operation, the Theun-Hinboun Power Company (THPC) has failed to fully compensate affected people for the loss of riverbank gardens, livestock and other property in the downstream villages. **Despite this, THPC has acquired new land for its expansion project prior to resolving outstanding issues.**

Loss of riverbank gardens, land and livestock

Many villagers living along the Hai and Hinboun rivers have still not been fully compensated for loss of riverbank gardens, livestock, land and other property from the existing Theun-Hinboun Hydropower Project (THHP).

Figure 2: Children playing with an abandoned irrigation pump in Kongphat Village

Fluctuating water levels and stronger flows have caused erosion along the Hai and Hinboun rivers leading to the loss of fertile agricultural land, fruit trees, riverbank gardens and vegetation. Resource Management and

Research (RMR) – a consulting firm originally contracted to conduct the EIA for the proposed expansion project – estimated that as of 2005, the original Theun-Hinboun project had caused the Hai River channel to widen by about 45m, leading to the loss of around 68ha of land (RMR 2006: 2-24). RMR estimated the value of this land to be between $100,000 and $136,000, but villagers have not received any compensation for these land losses. These impacts have become more and more severe since the project started operating in 1998. During the field visit, the village headman in Thakong Village along the Hai River told us that "erosion of the river is getting more serious and the river is getting wider. Some families lost around one hectare of land along the side of the river. However, only two families in the village received compensation because of erosion."

Figure 3: Erosion along the Hinboun River

Most villages along the Hai and Hinboun rivers lost access to riverbank gardens due to the erosion and higher river levels. According to the company's 2002 report on riverbank gardens, THPC evaluated the actual losses of riverbank gardens in 55 villages downstream along the Hai and Hinboun rivers, and in 2001 provided compensation in rice to affected persons in ten of these villages. The remaining 45 villages were supposed to receive compensation through livelihood restoration programs (THPC 2002). However, as documented in FIVAS (2007) and Barney (2007), many of these programs have failed and the villagers have not developed alternative sources of livelihood.

THPC's main compensatory measure for loss of riverbank gardens was the establishment of irrigated river terrace gardens on common land as replacement areas for villagers to grow vegetables. The concept was that after a few years' extension and support, the fuel and maintenance subsidy for the irrigation pump would be withdrawn and the villagers would be able to pay for these inputs themselves through income from vegetable sales. According to FIVAS's 2007 report, these gardens were at first enthusiastically taken up by most villagers, who thought that they would be more convenient than the lost riverbank gardens and they would have surplus to sell. Unfortunately, the company paid little attention to the lack of markets for the produce and the labor shortages in most households for such tasks as weeding and watering. There were also problems with fence maintenance (essential against wandering livestock), pump maintenance and other tasks which required communal cooperation. In many villages the system has started to break down (such as Kongphat, Nong Boua and Xang villages) or be abandoned altogether (Tha and Thonglom villages) (FIVAS 2007: 42-43).

Many villagers in the downstream areas also lost their livestock, fishing boats, fishing gear, bamboo bushes and other property as a result of project-induced floods or sudden releases of

water which swept property downstream. Apparently, THPC compensated villagers for lost boats during the first dry season only as far downstream from the power station as Thonglom Village, but beyond that point and since 1998, no compensation has been paid for either lost boats or fishing gear, even after unannounced dam closures (FIVAS 2007: 17). According to our interviews in Xang Village, the villagers have received no compensation for these losses, although local government officials have kept records of the losses caused by THPC releases.

Figure 4: A resident of Xang Village points out how high the water came last year in the middle of his abandoned rice field

No compensation for abandoned rice paddy

Flooding has become increasingly severe as a result of water releases from the dam and increased sedimentation due to erosion. Villagers have experienced recurring losses of wet season rice crops, leading to widespread paddy field abandonment. RMR estimated that at least 820 ha of rice paddy have been abandoned, but no compensation has been paid to villagers (RMR 2006: 2-147). According to villagers we interviewed in Nong Boua Village, people can no longer cultivate wet season rice on 60 ha of paddy land due to serious flooding during the wet season. Today they cultivate 37 ha of paddy land during the dry season (which is less profitable than wet season rice) and have abandoned 23 ha of rice paddy.

According to the village headman in Xang Village, the village has had to abandon 75 ha of rice fields on both sides of the Hinboun River, which comprises almost all of the village's rice fields. They tried dry season rice cultivation under THPC's mitigation and compensation program. In the first year, with THPC subsidies for fertilizer and fuel they grew 3.5 tons of rice per hectare, as compared to 5 tons per hectare in the wet season. However, after the first year the harvest declined to 1.5 tons per hectare, and in 2006 the villagers stopped participating, because THPC withdrew its subsidies. The village headman reported that "THPC promised to dig a canal for us and give us an electric pump, but after 2 years they haven't done anything." He said that "the villagers have not had enough rice to feed their families the last two years." The village has changed from a position of rice self-sufficiency to one of deficiency during the last decade. Villagers are convinced that the primary cause is altered flooding patterns as a result of THPC water releases into the Hai and Hinboun rivers (FIVAS 2007: 41). According to Lao law, these issues should have been resolved before proceeding with the expansion project.

2) "Resettlement" vs. "Relocation": double standards on compensation measures

"Voluntary" relocation

As acknowledged by THPC in its Resettlement Action Plan, many thousands of people living downstream along the Hai and Hinboun rivers will need to be resettled because of the more

serious floods caused by the expansion project (See Box 2). However, **in an apparent effort to avoid adhering to Lao law and the Equator Principles, THPC calls this resettlement "relocation",** somehow implying that resettlement standards don't apply. According to THPC, "relocation" is deemed a milder disruption than "resettlement", even though many thousands of people will have to move their houses as a result of project-induced flooding. THPC's characterization of the situation is an unjustified value judgment and illustrates the lack of understanding of the significant impacts that have already occurred as a result of aggravated flooding along the Hai and Hinboun rivers, and the substantial impairments to quality of life and livelihood that such flooding presents (International Rivers & FIVAS 2008a: 10). **In reality, many thousands of people living downstream of the project will need to move their houses, meaning that the International Finance Corporation's Performance Standard 5 applies for those private banks that have adopted the Equator Principles.**

THPC states that "relocation [in the downstream areas] will be voluntary and presented as an option for improvement of the current situation and preempt future problems" (THPC 2008, Part 3: 34). However, according to our interviews, **relocation is NOT voluntary for villagers.** Many would prefer to remain in their houses, and some villagers asked THPC to build flood protection dikes as an alternative to resettlement during project consultations. The company denied their request.

Box 2: Increased flooding along the Hai and Hinboun Rivers

As documented in THXP's Resettlement Action Plan, flooding downstream has increased as a result of the Theun-Hinboun project (Final RAP- Part 3: 35).* Villagers reported to International Rivers and BankTrack that floods occur more frequently and flood water stays longer in paddy fields after THHP. Villagers in Kongphat, Thonglom, and Nong Boua village reported that since the THHP, they have suffered floods annually instead of every 2-3 years. Villagers also reported that since the dam the flood water stays longer, killing the rice plants. Before the dam the floods lasted between 2-6 days. Now they last between 10 and 20 days. Rice plants die after being submerged for more than 10 days. The village headman and vice-headman in Xang Village reported that "the village flooded every year in the old times. But it didn't last so long. Now it is risky to grow rice. Before the dam, even if the fields would flood, we could still grow rice." The village headman in Thakong Village (along the Hai River) also reported that "the village flooded every year, but water stayed for only a day or so before the dam. Now it takes 4-6 days to clear the flood".

The Resettlement Action Plan acknowledges that floods will get worse as a result of the expansion project. According to the RAP, *"[t]he damage caused by a 100-year flood event will be experienced more frequently and in some cases every year" (THPC 2008, Part3: 34).* This will make life extremely difficult for those who are forced to remain on the floodplain.

*The RAP states that "Between 1000 and 2000 ha of paddy field have been or will need to be abandoned for wet season production in the Recipient River area as a result of flooding caused by natural conditions plus THPC releases" (Final RAP- Part 3: 35).

People from all six villages we interviewed along the Hai and Hinboun rivers reported that they have been told they will have to relocate to a new place either within or outside of their villages, although they still do not know details of the resettlement. In Tha, Kongphat, Thonglom, Xang, and Pakthuk villages, villagers reported to us that they had been told that the whole village

would need to move. Some villagers thought they would be able to move to higher ground in the same village, but other villagers thought that would not be an option, and they would need to move to a new location. Due to serious flooding caused by the existing dam project, some downstream villagers have already moved to higher ground (Barney 2007: 38-39).[3] **There is still no detailed plan for how many people will need to move in the downstream areas and where they will move to.** There is no clarity as to whether land is available for all the villagers that will need to move, nor where that land is located.

In August 2009, responding to the International Rivers' inquires on "which villages will need to be relocated as a result of the project?", the General Manager of THPC said "[c]urrently, we estimate that the 1st Phase [relocation] may involve 600 households" including the villages located along the middle and lower Hai River and at the confluence of the Hinboun River. However, the General Manager did not specify how many households will need to relocate in the 2nd phase, which includes the villages along the middle Hinboun (above National Road 13).

Families in the downstream areas are not entitled to a disturbance allowance for moving, including a food allowance during the transition period. The Lao Resettlement Decree states that "*APs [project affected persons] displaced and/or affected due to the loss of income and livelihood shall be provided with […] (b) food allowance, in cash or in kind to compensate for income lost, during the transition period […]" (Article 7).*
The Decree also states that "*All APs […] will be […] provided with other assistance during the transition period […] (Article 6, paragraph 7).*" **The failure to provide a food allowance and other assistance to displaced persons is a violation of the Resettlement Decree.**

Regarding the cost for resettlement entitlements and relocation of affected people, the Decree requires that "*Project owners shall prepare the Resettlement Plan with detailed cost estimates for compensation and other resettlement entitlements and relocation of APs" (Article 14, paragraph 1).* However, the final Resettlement Action Plan does not include costs for resettlement in the downstream areas. It only includes a budget for infrastructure development and livelihood improvement (THPC 2008, Part3: 71-72).

Figure 5: A water gauge set up in Xang Village

[3] "As of February 2007, ten Pak Veng households have decided to completely disassemble and reassemble their homes and relocate to higher ground behind the village. THPC has not provided any financial or material support for this move, which is directly related to the flooding events that now regularly accompany the wet season months" (Barney 2007: 38).

The Decree continues that *"The cost estimates shall be provided with a breakdown by category of APs by type and degree of impacts. The cost estimate will also include the cost of monitoring and evaluation; management and administration […]" (Article 14, paragraph 1).* Again, in the Resettlement Action Plan for the downstream areas, there is no cost estimate with a breakdown by category of affected people. **THPC's Resettlement Action Plan does not comply with the Lao Resettlement Decree.**

In addition, THPC has not provided a range of options for replacement housing for the resettled families in the downstream areas. According to villagers, THPC told them that it will provide land and construction material for houses (pillars, roof, and nails); however, people will have to dismantle and reassemble houses themselves, even though the displaced persons around the reservoir area have been provided with new houses. **Not providing a range of resettlement options to the downstream villagers is a violation of the Equator Principles.** International Finance Corporation's Performance Standard 5 requires companies to "*offer displaced persons choices among feasible resettlement options, including adequate replacement housing or cash compensation where appropriate" (paragraph 16).*

Moreover, there is no compensation for loss of paddy fields because THPC is promoting dry season rice cultivation, even though the dry season rice program has already previously failed in many villages. Downstream displaced persons will be provided with no compensation for fruit trees and other productive trees because THPC says that villagers will be able to come back to the old village and harvest them. They will be provided with no compensation for any other property in the old villages, such as rice storage huts. In addition, the villagers will have to move their cows and buffalos to the resettlement site because of additional flooding;

Box 3: Resettlement in the downstream areas

The villagers in Xang and Thonglom villages reported that after THXP begins operation, they will not be able to stay in their current location. The village headman of Xang Village said "THPC told us that whoever wants to move to a new place, the company will help you to move there. But, the villagers don't want to move out from the former village… The company said the water levels would double! If we won't move out, we could not live here! THPC planted a water gauge that showed us where the water would come up to in the village (See Figure 5). After seeing that, we decided that we will move." The vice-headman in Xang Village also reported that "in May, the riverbanks were flooded, so the villagers couldn't stay in the village. During the rainy season, the water comes up to the houses.* Flood water caused by the dam is more than one meter high. If it doubles, it will be higher than the floor of house. This is why we decided to move." They reported that the whole village is supposed to move before the expansion project commences operation.

The village headman in Thonglom Village reported that "almost all the villagers do not want to move. We will miss our old village. We told THPC that we did not want to move; however, THPC said we had to move." He continued "one to two months ago, a district official came and asked the villagers what we feel about the project. We told the official that we don't want to move. We have lived here for a long time. The village is more than 200 years old. I'm over 50 years old now and I was born in this village."

* In the downstream areas, houses are typically on stilts to avoid flooding. The flood levels in the village during the rainy season as a result of the current dam project are already high enough to reach the houses.

however, they may not have enough land for grazing in the resettlement site during the wet season.[4]

3) Failure to establish clear monitoring mechanisms in the downstream areas

THPC is failing to meet the requirements of the Equator Principles on establishing clear monitoring mechanisms. The Equator Principles require that the client *"establish procedures to monitor and measure the effectiveness of management program"* (*Performance Standard 1, paragraph 24).* However, THPC has not established clear procedures to monitor and measure the effectiveness of the livelihood restoration program, relocation process, infrastructure development, and social development in the downstream areas (THPC 2008, Part 3: 57). **This is a violation of Performance Standard 1.** Although the company addresses principles for monitoring and evaluation in its Resettlement Action Plan (RAP) for the reservoir area and states "the RAP will further be elaborated into detailed monitoring plans and designs for implementation" (THPC 2008, Part 1: 125), there is no detailed monitoring plans for the downstream areas in its RAP.

In contrast, THPC has established a more detailed monitoring mechanism for reservoir area resettlement, including an annual socio-economic household survey, periodic participatory rapid appraisals, and monitoring of the physical progress of resettlement and implementation of livelihood restoration programs against the schedule in the approved plan (THPC 2008, Part 2: 90-91). This is an additional unequal treatment between resettled families around the reservoir area and those living downstream.

Livelihood restoration and resettlement are particularly challenging processes in a country like Lao PDR where the government has limited capacity to deal with complicated compensation processes for many households, and many households including ethnic minority groups are vulnerable and have difficulties restoring their livelihood after they move. In addition, the lack of effective, independent legal mechanisms to hold the company accountable for failing to comply with commitments made to affected communities makes stringent independent monitoring mechanisms even more important. In order to ensure appropriate implementation of livelihood restoration, resettlement, infrastructure development, and social development in the downstream areas, it is vital for THPC to establish clear and transparent monitoring mechanisms in the downstream areas.

[4] According to our interviews with villagers in Kongphat, Thonglom, Xang, and Nong Boua villages along the Hai and Hinboun rivers on May 17 and 18, 2009.

B. Reservoir Resettlement area

> *"We depend on natural resources in the village and there are many resources here. In our village, we are self-sufficient. Soil quality here is much better than that in the new resettlement site. All of us are worried about the compensation for our lands, fruit trees, and timber trees."*
>
> —The village headman in Sopkhom Village in the reservoir area

Eleven villages (708 households, 4181 peoples) will be submerged by the new reservoir created by the expansion project. These people will have to relocate to three existing villages and will lose all their farmland. According to the RAP, *"[t]he entire population in the Theun-Hinboun Project Area can be classified as 'indigenous people'* (THPC 2008, Part 1: 117). These ethnic minority groups include Hmong, Phong, Thaveung, and Khmu (THPC 2008, Part 2: 106-114).

4) No "land for land" compensation

THPC is not providing "land for land" compensation for those oustees who lost or will lose their entire land holding as a result of the project. This is a fundamental violation of the Lao Resettlement Decree. The decree states that "*Where significantly large or entire land holding is affected by a project namely agriculture, residential or commercial land, the compensation shall be through provision of 'land for land' arrangement of equivalent size and productivity and be acceptable to APs [project affected persons] and project owners" (Article 6, paragraph 2).*

However, villagers in Somboun Village who have lost their entire land holding reported that each family is entitled to only one hectare of farmland in the resettlement area and cash compensation for the remaining lost land. One of our interviewees in Somboun used to have 2-3 ha of land, including 1.8 ha of rice paddy and a vegetable garden. They used to collect bamboo shoots and wild boar from the forest and fish from the river. The village headman in Somboun Village used to have three hectares of rice paddy. His wife reported that "we received only a little bit of money to compensate for our land and the money is not enough to buy new land." [5]

Figure 6: The villager in Sopkhom Village concerning about the compensation for his riverbank garden growing chilies and tobacco

[5] BankTrack's and International Rivers' interview with the village headman's wife in Somboun village, one of the resettlement villages around the reservoir area on May 15, 2009.

The village headman in Sopkhom Village has 1.5 ha of rice paddy (enough to feed eleven family members), 0.6 ha of riverbank gardens where he grows chili, and eleven cows grazing in the village. In his riverbank garden, he harvests 1.2 tons of chilies a year, which he can sell for 10,000 kip per kilogram to the market in Lak Sao. He is going to lose all his land due to the project; however, he is having difficulties finding replacement land near the resettlement site where he is supposed to move sometime between 2009 and 2011. He reported the situation is the same for other people in his village and the villagers still don't know what compensation they are entitled to. In the village, there are many cows and buffalos. The villagers may suffer from a shortage of grazing lands like those moved for the Nam Theun 2 Hydropower Project on the Nakai Plateau (WB & ADB 2009: 8, McDowell et al. 2009: 30-31). He told us that "we depend on natural resources in the village and there are many resources here. In our village, we are self-sufficient. Soil quality here is much better than that in the new resettlement site. All of us are worried about the compensation for our lands, fruit trees, and timber trees. The company is going to compensate us, but we don't want to lose these lands and trees". Some villagers in Sopkhom Village also reported that "since 2003, we haven't grown any timber and fruit trees because the company said we had to move. Therefore, we were just waiting. If we had grown these trees from 2003 until now we would have been able to harvest, for example, rubber trees."

Figure 7: Cows and water buffalos in Kongphat Village

5) Inadequate compensation for families who choose to self-relocate

THPC is not providing a food allowance and development assistance to those families in the reservoir area who have opted for self-relocation. **This is a violation of the Lao Resettlement Decree.** The Decree states that "*Affected Persons displaced and/or affected due to the loss of income and livelihood shall be provided with the following assistance until their income levels and living conditions can be stabilized:… (b) Food allowance […] during the transition period; (c) Suitable development assistance after displacement during the transition period until they are able to restore their incomes and living standards" (Article 7).* The Decree also states that *"All APs […] will be entitled to compensation for lost assets (structures, crops, trees) at replacement cost, and provided with other assistance during the transition period, and economic rehabilitation assistance to ensure that they are not worse off due to the project" (Article 6, paragraph 7).* Therefore, regardless of their relocation site, all displaced families have the right to receive a food allowance and development assistance.

In Somboun Village, 28 families out of 65 families in the village have chosen to self-relocate.[6] According to two families in Somboun Village that have opted for self-relocation, THPC told them that they were not eligible to receive any food support and other development assistance such as a toilet and water supply. This is unequal treatment for the self-relocation families. The families reported that they opted for self-relocation either because they have relatives in other villages, or because they do not feel there is sufficient good quality land in the project resettlement site. All self-relocation families we interviewed were concerned about food security for the next year because they are unable to cultivate rice this year either in the old village or the new village. This is because the typical rice cultivation season is the wet season, which is precisely the time that they are being forced to move. The villagers reported that they did not want to move to their new sites until they could get enough money or rice for next year.

6) Indigenous people's land allocation and resettlement

In the Resettlement Action Plan (RAP), there is no documentation on "good faith negotiation" with the affected indigenous communities regarding indigenous people's land acquisition and resettlement. **This is a clear violation of the Equator Principles** since "[t]he entire population in the Theun Hinboun Project Area can be classified as 'indigenous people'" according to the RAP (THPC 2008, Part 1: 117). Regarding relocation of indigenous peoples from traditional or customary land, IFC's Performance Standard 7 states that "*the client will not proceed with the project unless it enters into a good faith negotiation with the affected communities of Indigenous Peoples, and documents their informed participation and the successful outcome of the negotiation" (Performance Standard 7, paragraph 14)*. In the RAP, there is no documentation of any good faith negotiations with the indigenous peoples to be displaced by the project. The RAP only describes a public consultation process, which falls far short of the requirements of Performance Standard 7.

The RAP also fails to document the current land use of ethnic minorities in the reservoir area. **This is a violation of the Equator Principles.** IFC's Performance Standard 7 requires experts on indigenous peoples to document "*the indigenous peoples' land use in collaboration with the affected communities of indigenous peoples" (Performance Standard 7, paragraph 13)*. However, there is no detailed description about the current land use of reservoir communities in order to ensure to develop appropriate land compensation mechanisms for these people.

7) Empty promises on compensation

THPC is failing to comply with the Concession Agreement (CA) and RAP regarding compensation for the displaced persons around the reservoir area, including allocation of land, food support, and year-round access roads.

[6] According to THPC's response to International Rivers' inquiries, 37 households out of 149 households from Somboun and Phabang villages have chosen to self-relocate as of June 2009.

Allocation of land

THPC has not provided land other than rice paddy to the affected households. As a part of the standard land-use model for livelihood improvement in the RAP, THPC promises to allocate 0.5 ha of forage plot[7], 1.5 ha of plantation land, a 1.5 ha share of the community forest, and 0.5 ha of non timber forest product (NTFP) garden[8] to each household (THPC 2008, Part2: 83-84). The village headman from Phabang Village reported that THPC had allocated one hectare of paddy land for each household; however, none of the villagers we interviewed in May 2009 had received any other land. In response to International Rivers' inquires on when THPC will provide other lands, the General Manager of THPC stated that he believed this referred to *"a possible 'model' for livelihood activities within the RAP"* rather than a commitment to provide these lands.

Yet the RAP unequivocally promises these lands to affected communities (THPC 2008, Part2: 83-34). If THPC is not planning to provide these additional lands to the resettled families, this will be another empty promise by THPC. Regarding economic rehabilitation for project-affected peoples, the Lao Resettlement Decree states that "[*f]or displaced persons whose land-based livelihoods are affected due to the project, preference shall be given to land-based resettlement strategies, or where land is not available, options built around opportunities for employment or self-employment (Article 8, paragraph 2)."* Therefore, **if the company is not planning to allocate additional lands to the affected communities, the company needs to provide plans for how livelihoods will be restored.** When we visited the Nongxong resettlement site in May 2009, it did not appear that livelihood restoration programs had started yet. Furthermore, THPC does not have any detailed schedule for implementing different kinds of livelihood activities within the RAP (THPC 2008, Part2: 141). As the Decree suggests, it is critically important to develop a land-based resettlement strategy since non-land-based livelihood restoration programs, such as village savings and credit programs, tend to leave the risks of new livelihood restoration programs to affected communities and are not attractive to poorer householders which are risk-averse or unwilling to go into debt.

Figure 8: Resettlement site in Nongxong Village

Food support

In the CA and RAP, THPC promised to provide displaced persons 440 kg of milled rice per person per year and an additional support of supplementary protein to meet basic nutritional shortfalls during the transition period until livelihood activities provide subsistence requirements. However, the village headman in Phabang Village

[7] The RAP states that "Each household will be provided with 0.5 hectare of forage plot" (THPC 2008, Part 2: 83).

[8] The RAP states that "The Project will allocate 1.5 hectare of plantation land for each household and a 1.5 hectare share of the community forest. In addition each household will be provided with 0.5 hectare of NTFP-garden to be used for intensified production of some selected forest products." (THPC 2008, Part 2: 84)

reported that the villagers are receiving less than 440 kg of rice per person.[9] The General Manager of THPC, Mr. Robert Allen Jr., admitted that the company is not providing 440 kg of rice per person per year because THPC believes it is too much rice.[10] **This is a clear example of an empty promise by THPC.** According to Mr. Allen, THPC is monitoring the rice savings of each household, and providing food supports based on each household's rice savings. He said that many families still have rice savings from their last harvest in the old village, and that therefore THPC doesn't need to provide much food support for them.

However, this ignores the fact that the resettled families will have a very difficult time adapting to their new life in the resettlement site. It will take time for them to establish sustainable sources of livelihood. Rice savings are a critically important social safety-net for them. Food support should be provided to all resettled family members regardless of their current rice savings.

Access road

In the RAP, THPC promises that *"the new [resettlement] village must have year-round access to the district town and other population centers" (THPC 2008, Part 2: 51).* However, in Nongxong Village, one of the first villages that displaced persons moved into, there was no year-round access road in May 2009. **This is another empty promise by THPC**. When BankTrack and International Rivers visited Nongxong Village, at the beginning of the rainy season, the village headman from Phabang Village in the reservoir area reported that not having a year-round access road was a serious problem for his community because the current road to the village was muddy and narrow, making it difficult to move around. In addition, it is almost impossible for two cars to pass on the road. His former village was accessible by road and river. During the rainy season the villagers used boats for transportation. However, the new resettlement site is only accessible by a poor quality road, making rainy season access difficult.

C. Environmental Management of the Company

A company's environmental management plan and its capacity to implement the plan are critically important to ensure that planned outcomes are achieved. An examination of THPC's environmental management plan and its track record of implementation of its mitigation and compensation program reveal that the company's environmental management capacity has been extremely poor.

8) No plan to report to the affected communities

THPC does not plan to provide periodic reports to the affected communities that describe progress with implementation of the Resettlement Action Plan**. This is a violation of the Equator Principles.** IFC's Performance Standard 1 states that *"The Client will disclose the*

[9] The village headman in Somboun Village reported the same during BankTrack's and International Rivers' interview on May 15, 2009.

[10] During our meeting in May 2009.

Action Plan to the affected communities. In addition, the client will provide periodic reports that describe progress with implementation of the Action Plan on issues that involve ongoing risk to or impacts on affected communities" (Performance Standard 1, paragraph 26). This is a critically important monitoring procedure that should be a part of the company's environmental management system. Although the company plans to distribute annual and progress reports to the Government of Lao PDR (THPC 2008, Part1: 54), THPC has no plans to provide periodic reports that describe progress with implementation of action plans to the affected communities.

9) Poor historical record of environmental management

THPC's record of environmental management has been extremely poor. THPC's Mitigation and Compensation Program[11] developed in 2000 has not mitigated and compensated for the impacts on affected communities in the downstream areas, nor has it restored their livelihoods after nine years of implementation, demonstrating the company's substandard performance. THPC has failed to comply with its own commitments in the Logical Framework adopted by the company in 2001. This includes dry season rice cultivation, providing fruit trees, and promoting agricultural plantations.[12] Even though the company admits that fish catches declined significantly in the Hai and Hinboun rivers after the project came online, they have never provided villagers with compensation for fisheries losses, nor with replacement protein sources. They have built a few ponds, but these are too small to have anything but a negligible impact on replacing lost fisheries.

Dry season rice paddy

By their own admission, THPC has had difficulties ensuring the profitability of the dry season rice program due to the high costs of pumping water and of inputs such as fertilizer (THPC 2008, Part 3: 47).[13] Villagers have reported declining yields over the five years since the program was introduced, and a corresponding increase in debt to the village savings and credit funds (FIVAS 2007: 47). The Theun-Hinboun Expansion Project resettlement plan admits that only 872 families were still involved in the program as of 2007, out of approximately 5,000 families living in the downstream areas (THPC 2008, Part 3: 47).

Figure 9: Abandoned paddy fields in Xang village

[11] The THPC's Mitigation and Compensation Program outlines a 10 –year mitigation and compensation plan.

[12] Some of this has been documented in Section A, 1) of this report above.

[13] This is noted in Part 3 of the RAP which states that for irrigated agriculture "marginal benefit was obtainable overall but many villages lose money on this activity" (THPC 2008, Part3: 47).

For instance, in our interviews in Xang Village, it was reported that THPC introduced dry season rice paddy and installed an irrigation system in the village since they could not cultivate wet season rice anymore because of flooding; however, fuel for the irrigation pump and fertilizer was too expensive and the villagers lost money cultivating rice. THPC even advised them to stop cultivating dry season rice and the villagers have not done so for the past two years. They have had to sell their cows or buffalos to feed their families. Villagers who do not have cows or buffalos collect bamboo shoots, vegetables, and other products from the forest and grow upland rice (see section on *No compensation for abandoned rice paddy* on page 13 as well). Nong Boua Village also tried to cultivate dry season rice after electricity was installed in the village in 1997 and the pump installed by the government ten years ago. However, they are able to cultivate only 37 ha of rice paddy out of 60 ha because the pump is not big enough. Every year, they have asked THPC to build a bigger pump, with no response from the company yet. When the pump broke, it cost 35 million kip (about $4100) to fix the pump and the village and THPC each paid 50% of this cost. According to villagers, they cannot grow enough rice to feed their families; therefore, the villagers have to sell buffalos, cows, and bamboo shoots to buy rice. The village headman in Pak Veng Village also reported failure of dry season rice scheme (Barney 2007: 24-27)

Vegetable Gardens and Fruit Trees

THPC's dry season vegetable garden program has also run into problems due to a lack of markets for the produce, the additional labor required of villagers, pump breakdown, fence failure, crop disease, and a loss of fruit trees from flooding (see section on *Loss of Riverbank Gardens, Land and Livestock* on page 11as well). In Xang Village, THPC helped the communities plant fruit trees in 2004; however all the fruit trees died during floods. In Nong Boua Village, fruit trees provided by THPC in the southern part of the village all died from floods. Fruit trees in the northern part of the village survived, but don't produce enough fruit to sell.[14] In the case of Tha Village, the majority of the fruit trees died in floods and has not been replaced. Villagers in Tha Village explained that one of the reasons they have given up planting vegetables in the THPC-provided vegetable gardens was because of the death of the fruit trees provided by the company (FIVAS 2007: 21). Even the replacement vegetable gardens on the edge of the village are gradually falling into the river one by one (FIVAS 2007: 24).

Rubber plantations

Starting in 2008, THPC has provided support for rubber plantations. However, it takes seven years for a rubber tree to mature, villagers don't know how to harvest the rubber or where they will sell it to, and the investment cost is high. Therefore, it is still unknown whether the rubber plantations will help to restore the livelihood of affected communities in the downstream areas. During interviews, villagers in Xang and Nong Boua villages reported that THPC has provided support for the rubber plantations. The village headman in Xang Village said "THPC hasn't given us any rice support yet, but they gave us rubber trees. However, we cannot eat rubber!" In Xang Village, THPC provided 500 rubber trees per family, and provided land, fertilizer and

[14] BankTrack's and International Rivers' interview with the villagers in Xang and Nong Boua villages along the Hinboun River on May 18, 2009.

gasoline. The villagers were told they had to buy a machine to process the rubber, which is very expensive, costing between $1200 and $1500. The village headman in Xang Village said "I don't know how to buy this machine. The villagers also need coconut shells to get rubber for each tree, but we don't know where to get such a lot of coconut shells".

Figure 10: Woman in Kongphat Village concerning about compensations for the displacement.

Failure to conduct independent evaluations

THPC's Logical Framework adopted in 2001 to address mitigation and compensation needs included a commitment to conduct independent evaluations and review of the program every two years. The company did conduct an independent review in 2004, but failed to implement any of the review's recommendations (FIVAS 2007: 7&13). **The company did not conduct any additional independent reviews after this time regardless of its commitment.** If THPC failed to comply with commitments in the past, what guarantee is there that they will comply in the future? Moreover, in the RAP it is not clear how independent the Panel of Experts for external monitoring will be (THPC 2008, Part: 132). In order to ensure the independence of the Panel of Experts, the company should establish a transparent and accountable process for selecting the members of the Panel, make a commitment to publicly release their reports, and agree to adhere to the Panel's recommendations.[15]

[15] Also see "Review of Draft Final EIA/EMMP for Theun-Hinboun Expansion Project, Lao PDR" (International Rivers & FIVAS 2008b: 8-9)

Conclusion and Recommendations

Conclusion

Based on our field visit and additional research, **the Theun Hinboun Expansion Project is in violation of the Lao government's resettlement law in five instances and the Equator Principles in five instances. THPC is also failing to comply with its Concession Agreement and Resettlement Action Plan.** These violations are unacceptable for a project that claims to be adhering to international standards, and that is being financed by three commercial banks that have adopted the Equator Principles.

In summary, the project is in violation of the *Decree on the Compensation and Resettlement of the Development Project in Lao PDR* in the following aspects:

- Compensation for loss of assets and livelihoods in the downstream villages as a result of the original Theun-Hinboun Project has not been paid [Violation of *Article 6*],
- No entitlement to food allowance and relocation assistance for those being resettled in the downstream areas [Violation of *Articles 6 & 7*],
- No detailed cost estimate for resettlement in the downstream areas [Violation of *Article 14*],
- No "land for land" compensation for those displaced by the new reservoir [Violation of *Article 6*], and
- No provision of a food allowance and development assistance to those families in the reservoir area who have opted for self-relocation [Violation of *Articles 6 & 7*].

The violations of the Equator Principles are:

- No provision of a range of resettlement options to the downstream villagers [Violation of *Performance Standard 5*],
- Failure to establish clear monitoring mechanisms in the downstream areas [Violation of *Performance Standard 1*],
- No documentation on "good faith negotiations" with the affected indigenous communities [Violation of *Performance Standard 7*],
- No documentation on the affected indigenous communities' land use [Violation of *Performance Standard 7*], and
- No plan to provide periodic reports to the affected communities that describe progress with implementation of the Resettlement Action Plan [Violation of *Performance Standard 1*].

The violations of the Concession Agreement and the Resettlement Action Plan are:

- No allocation of forage plot, plantation land, share of the community forest, and non timber forest product (NTFP) garden to each household relocated in the reservoir area;
- No provision of 440 kg of milled rice per person per year for the displaced persons in the reservoir area during the transition period until livelihood activities provide subsistence requirements; and
- No provision of year-round access roads to the new resettlement areas.

Recommendations

In order to ensure that the serious problems facing the affected communities are being resolved and to bring the project into compliance with the national laws of Lao PDR and the Equator Principles, we recommend that **ANZ, BNP Paribas, and KBC undertake the following actions**:

1) The banks should conduct a mission to the project site to review the social and environmental impacts of the project and the food security of the affected communities, and assess the project's compliance with Lao law and the Equator Principles;
2) After the mission, ANZ, BNP Paribas and KBC should engage with THPC to ensure that the company brings the project into compliance with Lao law and the Equator Principles, and specify a strict timeframe for doing so; and
3) In line with the provisions in the Equator Principles, the bank consortium should withhold disbursements to THPC until the project is brought into compliance.

We also recommend that **Statkraft should undertake following actions**:

1) Statkraft should take immediate steps to engage with THPC to ensure that the project is brought into compliance with Lao law, the Equator Principles, and the project's own Concession Agreement and Resettlement Action Plan;
2) Measures to bring the project into compliance should be undertaken within a strict timeframe. Information about this should be shared with stakeholders; and
3) If Statkraft is unable to use its position in THPC to ensure the project is brought into compliance, the company should reconsider its involvement in THPC and consider selling out entirely.

The following are a list of key issues that we believe must be addressed immediately:

A. ***Downstream along the Hai and Hinboun Rivers***

1) Outstanding compensation for loss of livelihood in the Hai and Hinboun Rivers [Violation of the Lao Resettlement Decree]

1.1 The company should complete all outstanding compensation for loss of land, vegetable gardens, fisheries, livestock and other property before the Theun-Hinboun Expansion Project commences operation.

1.2 The company should conduct an independent review of implementation of the Logical Framework, the implementation of current livelihood programs, and the contribution to flooding caused by the existing dam project and disclose the review report publicly. The company should use this review as the basis for a reassessment of the livelihood restoration plan for downstream villages.

1.3 The company should provide or construct all necessary infrastructure works to prevent erosion and floods in the downstream villages.

1.4 The company should provide downstream villagers with compensation for their abandoned rice fields, either through cash compensation, or, ideally, through replacement land.

1.5 The company should provide villagers with direct compensation for project losses until such time as the livelihood restoration measures are successful.

1.6 The company should provide appropriate irrigation systems before the Expansion Project commences operation and technical support in conducting dry season agriculture until livelihood restoration is achieved.

2) "Resettlement" vs. "Relocation": double standards on compensation measures
[Violation of the *Decree on the Compensation and Resettlement of the Development Project in Lao PDR* and *Performance Standard 5*]

2.1 The company should identify all families that will need to be resettled in the downstream areas and develop a detailed resettlement action plan.

2.2 The company should provide all families that need to move the same entitlements as those offered to families moved from the reservoir area, including the option of a new house or self-relocation with financial and food support.

3) Failure to establish clear monitoring mechanisms in the downstream areas
[Violation of *Performance Standard 1*]

3.1 The company should develop clear monitoring mechanisms to ensure the effective implementation of the livelihood restoration program, resettlement of downstream communities, infrastructure development, and social development projects.

B. Reservoir Resettlement area

4) No "land for land" compensation
[Violation of Lao Resettlement Decree]

4.1 The company should provide "land for land" compensation for the affected communities which lost "significantly large or entire land holding".

5) Inadequate compensation for families who choose to self-relocate
[Violation of the Lao Resettlement Decree]

5.1 THPC should provide food support and development assistance for all affected communities, including those who opt for self-relocation, until such time as they establish sustainable replacement livelihoods.

6) Indigenous people's land allocation and resettlement
[Violation of *Performance Standard 7*]

6.1 The company should elaborate a more detailed livelihood restoration plan for the ethnic minority groups based on their current land use system and on consultations with the groups. The consultation process should be well-documented and the plan should be publicly released.

7) Empty promises on compensation
[Violation of *the Concession Agreement* and *the Resettlement Action Plan*]

7.1 The company should allocate land according to what was agreed upon in the RAP and if the land is insufficient it should continue to provide food support until other alternative livelihoods are developed.

7.2 The company should provide 440 kg of milled rice per person per year and additional support of supplementary protein to meet the basic nutritional needs of the resettled communities during the transition period.

7.3 The company should provide year-round access road to the resettlement sites.

C. Environmental Management

8) No plan to report to the affected communities

[Violation of *Performance Standard 1*]

8.1 The company should develop a plan to provide periodic reports that describe progress with implementation of action plans to the affected communities.

9) **Poor Historical record of environmental management**

9.1 Consulting with affected communities, the company should revise the livelihood restoration plans for all affected people based on their review of past experiences and available resources in the area.

9.2 Considering the historical record of environmental management of the company, the company should establish more transparent and accountable reporting mechanisms to ensure compliance with their own commitments. At least the Panel of Experts report, the Annual Progress Report by the Social and Environmental Division Monitoring Unit, the Social and Environmental Division Environmental Unit, Social Development Unit, Ethnic Minority Specialist, and Annual Socio-Economic Surveys should be disclosed to the public.

9.3 In order to ensure the independence of the Panel of Experts, the company should establish a transparent and accountable process for selecting the Panel members, and commit to implementing the Panel's recommendations.

Figure 11: Villagers planting upland rice in the Hinboun Valley. Villagers have had to increase upland rice cultivation due to flooding of rice paddy as a result of the existing project.

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Annexes

Annex 1: Relevant sections of the Decree on the Compensation and Resettlement of the Development Project and Performance Standards

1. Decree on the Compensation and Resettlement of the Development Project (7 July, 2005)

PART III Compensation

Article 6 Compensation Principles

2. Where significantly large or entire land holding is affected by a project namely agriculture, residential or commercial land, the compensation shall be through provision of "land for land" arrangements of equivalent size and productivity and be acceptable to APs and project owners.

7. All APs, regardless of land use right, will be entitled to compensation for lost assets (structures, crops, trees) at replacement cost, and provided with other assistance during the transition period, and economic rehabilitation assistance to ensure that they are not worse off due to the project.

8. All previous claims and unresolved issues related to tenure status and ownership of land and other assets affected by the sub-project or components shall be resolved prior to initiating any new land acquisition measures on the respective sub-project or component.

Article 7 Assistance during Relocation and Transition Period

APs displaced and/or affected due to the loss of income and livelihood shall be provided with the following assistance until their income levels and living conditions can be stabilized:

(a) Transport allowance or assistance in kind to transfer to the resettlement site or their choice of relocation;
(b) Food allowance, in cash or in kind to compensate for income lost, during the transition period;
(c) Suitable development assistance after displacement during the transition period until they are able to restore their incomes and living standards or reach the targeted level of household incomes on a sustainable basis.

Article 8 Economic Rehabilitation

2. For displaced persons whose land-based livelihoods are affected due to the project, preference shall be given to land-based resettlement strategies, or where land is not available, options built around opportunities for employment or self-employment.

Part IV Fundamental Components of Compensation And Resettlement

Article 14 Resettlement Cost and Budget

1. Project owners shall prepare the Resettlement Plan with detailed cost estimates for compensation and other resettlement entitlements and relocation of APs. The cost estimates shall be provided with a breakdown by category of APs by type and degree of impacts. The cost

estimates will also include the cost of monitoring and evaluation; management and administration; and other cost related to the project impacts; and adequate provisions for contingencies.

2. Performance Standards

Performance Standards 1

Monitoring

24. As an element of its Management System, the client will establish procedures to monitor and measure the effectiveness of the management program. In addition to recording information to track performance and establishing relevant operational controls, the client should use dynamic mechanisms, such as inspections and audits, where relevant, to verify compliance and progress toward the desired outcomes. For projects with significant impacts that are diverse, irreversible, or unprecedented, the client will retain qualified and experienced external experts to verify its monitoring information. The extent of monitoring should be commensurate with the project's risks and impacts and with the project's compliance requirements. Monitoring should be adjusted according to performance experience and feedback. The client will document monitoring results, and identify and reflect the necessary corrective and preventive actions in the amended management program. The client will implement these corrective and preventive actions, and follow up on these actions to ensure their effectiveness.

Reporting

External Reporting on Action Plans

26. The client will disclose the Action Plan to the affected communities. In addition, the client will provide periodic reports that describe progress with implementation of the Action Plan on issues that involve ongoing risk to or impacts on affected communities, and on issues that the consultation process or grievance mechanism has identified as of concern to those communities. If the management program results in material changes in, or additions to, the mitigation measures or actions described in the Action Plan on issues of concern to the affected communities, the updated mitigation measures or actions will also be disclosed. These reports will be in a format accessible to the affected communities. The frequency of these reports will be proportionate to the concerns of affected communities but not less than annually.

Performance Standards 5

Displacement

Physical Displacement

16. If people living in the project area must move to another location, the client will: (i) offer displaced persons choices among feasible resettlement options, including adequate replacement housing or cash compensation where appropriate; and (ii) provide relocation assistance suited to the needs of each group of displaced persons, with particular attention paid to the needs of the poor and the vulnerable. Alternative housing and/or cash compensation will be made available prior to relocation. New resettlement sites built for displaced persons will offer improved living conditions.

Performance Standards 7

Special Requirements

Impacts on Traditional or Customary Lands under Use

13. If the client proposes to locate the project on, or commercially develop natural resources located within, traditional or customary lands under use, and adverse impacts3 can be expected on the livelihoods, or cultural, ceremonial, or spiritual use that define the identity and community of the Indigenous Peoples, the client will respect their use by taking the following steps:

- The client will document its efforts to avoid or at least minimize the size of land proposed for the project
- The Indigenous Peoples' land use will be documented by experts in collaboration with the affected communities of Indigenous Peoples without prejudicing any Indigenous Peoples' land claim4
- The affected communities of Indigenous People will be informed of their rights with respect to these lands under national laws, including any national law recognizing customary rights or use
- The client will offer affected communities of Indigenous Peoples at least compensation and due process available to those with full legal title to land in the case of commercial development of their land under national laws, together with culturally appropriate development opportunities; land-based compensation or compensation-in-kind will be offered in lieu of cash compensation where feasible
- The client will enter into good faith negotiation with the affected communities of Indigenous Peoples, and document their informed participation and the successful outcome of the negotiation

Relocation of Indigenous Peoples from Traditional or Customary Lands

14. The client will consider feasible alternative project designs to avoid the relocation of Indigenous Peoples from their communally held5 traditional or customary lands under use. If such relocation is unavoidable, the client will not proceed with the project unless it enters into a good faith negotiation with the affected communities of Indigenous Peoples , and documents their informed participation and the successful outcome of the negotiation. Any relocation of Indigenous Peoples will be consistent with the Resettlement Planning and Implementation requirements of Performance Standard 5. Where feasible, the relocated Indigenous Peoples should be able to return to their traditional or customary lands, should the reason for their relocation cease to exist.

Annex 2: BankTrack's and International Rivers' trip schedule

- **Day 1:** Visit to the dam construction site, Thasala Village and one of the first villages to be resettled, Somboun Village. In Thasala Village, we interviewed three randomly chosen households, consisting of five men and three women. Almost all the villagers in Somboun Village had already moved to the resettlement site and the village was quite empty at the time of our visit. We interviewed four households in Somboun Village, including the village headman (seven men and five women).

- **Day 2:** Visit another reservoir village, Sopkhom Village, which hadn't moved yet, and visit to the new resettlement site in Nongxong Village. In Sopkhom Village, we interviewed the village headman and vice- headman and were joined by other villagers (six men and one woman). In the resettlement site in Nongxong Village, we interviewed the village headman from Phabang Village and the village headman and one randomly chosen host family in Nongxong Village (four men and one woman).

- **Day 3:** Visit to four villages along the Hai and Hinboun rivers. In Thankong Village, we interviewed the village headman and in Kongphat Village, we interviewed three randomly chosen households which consisted of four men and one woman. In Tha Village, we interviewed the vice- headman and his wife and in Thonglom Village, we interviewed the village headman and one randomly chosen household (one man and one woman).

- **Day 4:** Visit to two villages along the middle and lower Hinboun River. In Xang Village, we interviewed the village headman, his wife, the vice headman, and the village headman from Pakthuk Village (a nearby village). In Nong Boua Village, we interviewed 12 men, including the village headman and the vice headman.