



Standard Chartered
Chris Smith
1 Aldermanbury Square
EC2V 7SB London
United Kingdom

Subject:

Independent Monitoring for the Nam Theun 2 Hydropower Project

Date

3 May 2005

Dear Sir,

We understand that your institution is one of the financing arrangers for the Nam Theun 2 Hydropower Project in Lao PDR. As you are aware, Nam Theun 2 has been a controversial project for over a decade, largely due to concerns regarding the Government of Laos' limited capacity and commitment to manage the significant social and environmental impacts of the project. NGOs have raised ongoing concerns regarding the project's compliance with World Bank safeguard policies, and thus, in large part, with the Equator Principles.

However, we understand that despite this, the project is moving forward. With this in mind, we are writing to urge you to insist that independent monitoring arrangements for Nam Theun 2 are developed and included in your loan agreement with the Nam Theun 2 Power Company to ensure that the company and the government respects commitments made to project-affected people.

Summary of Social and Environmental Risks

Nam Theun 2 will forcibly displace 6,200 indigenous people and impact more than 100,000 villagers who depend on the Xe Bang Fai River for fish, agriculture and other aspects of their lives. Project developers and the Lao government, together with the World Bank and Asian Development Bank, have developed complex mitigation and compensation plans for the affected people, and have stated that they are committed to ensuring that people are adequately compensated for their losses.

BankTrack - Boothstraat 1c
3512 BT Utrecht, the Netherlands
T: 31-30-2334343, F: 31-30-2381112
E: coord@banktrack, www.banktrack.org

However, experience with other hydropower projects built in Laos indicates that it is difficult to hold the Lao government and project developers accountable once loans have been disbursed and construction completed. Around 58,000 people are still suffering from loss of fisheries, inability to cultivate vegetables along the riverbanks, inadequate fresh water supplies and transportation difficulties as a result of dam projects built in Laos, and promises to provide compensation and mitigation have failed to materialize. The lack of an established legal system and an independent judiciary make it almost impossible for affected people to hold the developers and the government accountable when they fail to live up to their commitments. Furthermore, with no free press or local civil society organizations in Laos, it is extremely difficult to receive objective and accurate information about the situation on the ground. For this reason, independent monitoring of the Nam Theun 2 project as it moves forward is essential in order to ensure that commitments are met.

Adequate “Independent” Monitoring Arrangements?

The monitoring arrangements currently proposed for Nam Theun 2 are inadequate and fail the test of independence. The Social Development Plan allows for two monitoring and evaluation bodies: an Independent External Monitoring team (IEM) and the World Bank Panel of Social and Environmental Experts. The IEM will be engaged through a competitive bidding process and will be selected by the Resettlement Committee, a Lao government body. Once selected, the IEM will report directly to the Resettlement Committee and will be paid for by the Nam Theun 2 Power Company.

There are no assurances that the IEM’s monitoring reports will be publicly available. Without the disclosure of these reports and clear enforcement mechanisms, there will be no way to ensure that the Lao government or project developers implement the IEM’s recommendations. Additionally, there are no provisions to ensure that the “independent” monitoring team is free from conflicts of interest, nor to ensure that the IEM is truly autonomous from the government.

The World Bank Panel of Social and Environmental Experts, currently consisting of two members, Thayer Scudder and Lee Talbot, also cannot be considered independent. The Panel of Experts has been a strong advocate of the project since the late 1990s. Their history with Nam Theun 2 and the role they played in its development indicates that they have a vested interest in promoting the project as a success; they have essentially staked their reputation on Nam Theun 2. There is a clear incentive for the Panel of Experts to downplay problems that might arise during the project’s implementation.

The Need for Independent Monitors

For this reason, we are writing to ask that you insist upon a truly independent monitoring arrangement for the Nam Theun 2 Hydropower Project and that the establishment

of an independent monitoring group be included in your loan agreement with the Nam Theun 2 Power Company. Certainly, with a project as complex as this, involving a client with a history of problematic compliance, financiers have a strong interest in ensuring that they receive unbiased information as to whether the client is duly managing social and environmental risks as outlined in the mitigation plans. Independent monitors could also play an important role in assessing the effectiveness of original plans, and make ongoing recommendations to ensure that unforeseen risks and complications are adequately managed. Finally, independent monitoring would also allow the banks to uphold their commitment to the Equator Principles, which require banks to covenant their clients to Environmental Management Plans, and take corrective actions in cases of non-compliance.

Independent monitoring arrangements should meet the following conditions:

1. Monitors should come from a diverse array of backgrounds with comprehensive and complementary expertise on key issues, experience working in the region, and no connections to the Nam Theun 2 project, the hydropower industry, or the government of Laos. Individuals should be vetted by various stakeholders, including civil society organizations.
2. Monitors should spend a significant amount of time in Laos and establish their own work plan under their Terms of Reference through a transparent process involving affected communities and other stakeholders. Monitors should be able to conduct their work without government accompaniment.
3. Monitoring reports should be made publicly available in English and Lao language at the same time they are distributed to the World Bank, other financiers, the Lao government, and the project consortium. Public release of monitoring reports represents current good practice among project finance transactions, as illustrated by the disclosure practices of the Baku-Tbilisi-Ceyhan Corporation. Reports should include a matrix of recommendations and actions taken to implement previous recommendations
4. An enforcement mechanism should be developed to ensure that issues raised by independent monitors are addressed, including, where appropriate, halting of loan disbursements until measures have been complied with. These provisions should be included in your institution's loan agreements with the Nam Theun 2 Power Company, and such a mechanism could fulfill Point 8 of the EPs, which states that "In circumstances where a borrower is not in compliance with its environmental and social covenants, such that any debt financing would be in default, we will engage the borrower in its efforts to seek solutions to bring it back into compliance with its covenants."
5. Independent monitoring should take place for at least 10 years after commercial operation, or for the duration of the loan.



We hope you will take this request into account as you conclude your loan negotiations with the Nam Theun 2 Power Company. Should you require further information on the Nam Theun 2 Hydropower Project, please do not hesitate to contact us. You may also visit www.irn.org/programs/mekong/namtheun.html for further information and analysis on concerns surrounding Nam Theun 2.

We look forward to hearing from you.

Sincerely

Johan Frijns
coordinator BankTrack

Aviva Imhof, Campaigns Director
International Rivers Network