



Lao People's Democratic Republic
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Ministry of Energy and Mines
Cabinet Office

**Technical Assistance for Capacity Building in the
Hydropower and Mining Sectors Additional Financing (HMTA-AF)**

**Environmental and Social Safeguards
Activities Document**

(Draft 14 March 2014)

Abbreviation and Acronym

ADB	The Asian Development Bank
AF	Additional Financing
AusAID	Australian Agency for International Development
CA	Concession Agreement
DEB	Department of Energy Business
DEM	Department of Energy Management
DEPP	Department of Energy Policy and Plan
DESIA	Department of Environment and Social Impact Assessment
DFRM	Department of Forest Resources Management
DGM	Department of Geology and Minerals
DOM	Department of Mines
DWR	Department of Water Resources
ECC	Environmental Compliance Certificate
EDL	Electricité du Laos
EIA	Environmental Impact Assessment
EPF	Environmental Protection Fund
EPL	Environmental Protection Law
ESIA	Environment and Social Impact Assessment
ESSAD	Environmental and Social Safeguard Activities Document
GOL	Government of Lao PDR
HMTA	Technical Assistance for Capacity Building in the Hydropower and Mining Sectors
HMTA-AF	HMTA additional financing
IEE	Initial Environmental Evaluation
IFC	International Finance Cooperation
IPP	Independent Power Producer
M&E	Monitoring and Evaluation
MAF	Ministry of Agriculture and Forestry
MEM	Ministry of Energy and Mines
MOF	Ministry of Finance
MONRE	Ministry of Natural Resources and Environment
MOU	Memorandum of Understanding
MPI	Ministry of Plan and Investment
MPWT	Ministry of Public Works and Transport
MRC	Mekong River Commission
NPSH	National Policy on Environmental and Social Sustainability of Hydropower Sector
OP/BP	The World Bank's Operation Policy/Best Practices
PAFO	Provincial Agriculture and Forest Office
PAPs	Project affected peoples
PDA	Project Development Agreement
PDEM	Provincial Department of Energy and Mines
PDO	Project development objective
PDWT	Provincial Department of Public Works and Transport
PONRE	Provincial Office on Natural Resources and Environment
PRSO	Poverty Reduction Support Operation
PSHD	Policy on Sustainable Hydropower Development
PSHDC	Committee on Policy on Sustainable Hydropower Development
RAMSAR	Convention on Wetlands of International Importance Especially as Waterfowl Habitat
SESO	Standard Environment and Social Obligations
SIA	Social Impact Assessment
TA	Technical assistance
US\$	United States Dollar
WB	The World Bank
WREA	Water Resources and Environmental Administration

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Technical Assistance for Capacity Building in the
Hydropower and Mining Sectors Additional Financing

Environmental and Social Safeguards Activities Document

A. Introduction

1. Through the Technical Assistance for Capacity Building in the Hydropower and Mining Sectors (HMTA) project¹, the Government of Lao PDR (GOL) has implemented technical assistance and capacity building activities with an aim to *increase human resources capacity and improve the performance of Government oversight institutions for the hydropower and mining sectors*. The activities are being implemented through the following components: (1) *Joint Hydropower and Mining Learning Program*; (2) *Hydropower Sector Development*; (3) *Mining Sector Development*; and (4) *Project Administration and Management*. The activities will not involve any infrastructure investment or create any direct environmental or social negative impacts. However, given the rapid development of hydropower and mining in Lao PDR and the needs for safeguard capacity building of key agencies, the HMTA project was classified by the World Bank (WB) as safeguard Category B and the Environmental Assessment policy (OP/BP 4.01) was triggered. The policy was triggered to ensure that the technical assistance and capacity building activities would be designed and implemented with due consideration to strengthen safeguard capacity of key agencies to manage potential negative impacts and/or to enhance positive impacts of hydropower and mining projects. To be in line with OP/BP 4.01 *an Environmental and Social Safeguard Activities Document (ESSAD)* was prepared and adopted as the safeguard instrument for the original project and it was translated into Lao language and disclosed (both Lao and English) in country and at the WB InfoShop.

2. In November 2013, the GOL requested the WB to provide additional financing for the HMTA with an aim to institutionalize and operationalize the on-going activities and scale up the impact of the institutional and human capacity development efforts. The HMTA additional financing (AF) project is prepared for implementation during 2014-2018. During AF preparation it was considered necessary to trigger OP/BP 4.10 on Indigenous Peoples to make sure that ethnic groups actively participate in consultation, information disseminations, and/or workshops financed under the AF on the development of policies, and legal and regulatory framework for the hydropower and mining sectors. Similar to the original project, an ESSAD (this document) is prepared and has been updated to be in line with OP/BP 4.10 for the AF and it will be translated and disclosed (both English and Lao) in country and at the WB InfoShop. The ESSAD outlines the AF project description (Section B), the national legal and institutional frameworks (Section C), the WB safeguard policy triggered for the project (Section D), the objectives and principles of the ESSAD (Section E), the original project implementation progress including challenges/lessons learnt (Section F), the potential impacts on safeguard capacity building of the AF (Section G) including actions to ensure active participation of ethnic groups in line with OP/BP 4.10, and the implementation arrangement and monitoring for the ESSAD implementation (Section H). Similar to the original project, the environmental and social capacity building and awareness is considered an integral part of the AF project design.

¹ With assistance from the World Bank (WB) and AusAID incorporating with the International Finance Cooperation (IFC); the HMTA project activities began in 2010 and the closing date is 30 September 2015.

B. Project Description

3. **PDO:** The Project's Development Objective (PDO) will be the same as the original project i.e. *to increase human resources capacity and improve the performance of Government oversight institutions for the hydropower and mining sectors*. The AF is designed to scale up and extend the impact of the institutional and human capacity development efforts that are being supported under the original project, centering around three pillars: (i) addressing sector issues at policy level, (ii) institutionalizing the concession agreement (CA) process, and (iii) human resource development. The activities would be reinforced and sustained through the operationalization and skills development of sector management reforms along the value chain in both the hydropower and mining industries (including planning, awarding, management and monitoring of concession agreements as well as revenue management and inclusive growth); moving forward hydropower sector reform; and further strengthening capacity of education institutes to produce a skilled workforce for developing the hydropower and mining sector while enhancing job creation and local economic development.

4. **Project components:** The AF activities will be carried out through the on-going four components as follows:

- **Component 1: Joint Hydropower and Mining Learning Program.** Additional support of US\$3.0 million (for a total of US\$5.34 million) will be provided to MEM, PDEMs, and relevant key agencies through technical assistance, training, study tour, workshop, equipment, and operating cost to: (a) further strengthen the human resource capacity of the Ministry of Energy and Mines (MEM)² and Provincial Departments of Energy and Mines (PDEMs) by financing short-course training addressing immediate needs to improve core functions, long-term training courses in the form of scholarships for key personnel to pursue higher education abroad in critical areas for both hydropower and mining, and by supporting the existing training facility at MEM; (b) scale up support for the Faculty of Engineering at the National University of Laos (NUOL) and technical schools through: (i) technical assistance to update curricula, (ii) teacher training, exchanges, and internships at regional universities/institutes, and industry private sector), (iii) procuring educational laboratory equipment, library books, and teaching aids as needed for improving the quality of education; and (c) deepen the cooperation and partnership between industry and education institutes by strengthening the trade working groups established during the original project.
- **Component 2: Hydropower Sector Development.** Additional support of US\$7.0 million (for a total of US\$10.22million) will be provided to MEM, PDEMs, relevant line ministries, and key agencies for technical assistance, on-the-job training, short-term training, study tour, workshop, equipment, and operating cost to: (a) operationalize the Policy on Sustainable Hydropower Development (PSHD), and the Independent Power Producer (IPP) process³ with a focus on: (i) effective management and monitoring of Concession Agreements (CA), (ii) technical and engineering capacity to address safety issues in hydropower development, and (iii) establish a

² The Ministry is comprised of 8 departments/office/institutes at central level i.e. Cabinet, Department of Personnel and Organization (DPO), Department of Inspection (DOI), Department of Energy and Planning (DEPP), Department of Energy Management (DEM), Department of Energy Business (DEB), Institute of Renewable Energy Promotion (IREP), and Department of Mines (DOM). PDEMs are responsible for MEM activities at provincial level.

³ The Independent Power Producer (IPP) comprises the following key steps: Memorandum of Understanding (MOU) signing, Project Development Agreement (PDA) signing, Concession Agreement (CA signing), Commercial Operation Date (COD), and Project Transfer.

hydropower fiscal mechanism to improve revenue collection and facilitate budget allocation to agencies and provinces; and (b) prepare the hydropower sector strategy and action plan supporting the reform process towards efficiency and effectiveness in hydropower development in the domestic and regional market (system-to-system power trade). This component is implemented in partnership with the International Finance Cooperation (IFC).

- **Component 3: Mining Sector Development (about US\$6.0 million).** The AF would provide technical assistance, training, study tours, workshops, necessary equipment, and operating costs to MEM, PDEMs, the Ministry of Natural Resources and Environment (MONRE), NA and relevant key agencies to: (a) complete and operationalize the standard terms and conditions and CA instruments, in particular: (i) strengthening staff capacities for inspection and project evaluation, (ii) complete guidelines and regulations for the establishment of community development funds⁴, (iii) establishing operation and maintenance arrangements for the mining cadaster system, (iv) developing geo-data collection capacity, and (v) establishing a mineral fiscal mechanism to improve revenue collection and facilitate budget allocation to agencies and provinces; (b) develop a sector strategy focused on improving sector governance⁵, including further strengthening the oversight capacity of the Lao National Assembly (NA), preparation of a related strategic environmental and social assessment (SESA) and operationalizing environmental and social regulations.

Component 4: Project Management, Monitoring, and Evaluation: Additional support of US\$1.8million (for a total of US\$2.18million) will be used to finance technical assistance, training, workshops, equipment, and operating costs for the Project Secretariat Office (PSO) established within MEM to carry its functions of coordination, financial management, procurement, safeguards, monitoring, and reporting on project progress including maintaining all project records. In addition, the AF will finance consultancy services for developing MEM's IT platform to support business processes for the hydropower and mining sectors. This component will also finance consultancy services for strengthening internal control system for the hydropower and mining sectors led by the Inspection Department, and to support the implementation of the ministerial decree on gender advancement. The PSO is responsible for this component.

5. **Project location:** Similar to the original project, the additional financing (AF) will support upstream work (policy, regulatory, legal framework) through technical assistance and capacity building. These activities are not location-specific. Positive benefits due to increased awareness and knowledge of MEM staff on safeguard issues and mitigation, and increased capacity of MONRE and PONRE agencies to monitor safeguard compliance are expected to apply country-wide.

C. WB Safeguard Policies Triggered for the Project

6. WB has established ten safeguard policies to be applied to all projects proposed for WB financing. For this project, two safeguard policies i.e. Environmental Assessment (OP/BP 4.01) and Indigenous Peoples (OP/BP) 4.10 have been triggered and the mitigation measures are proposed in this

⁴Subject to the pace of implementation and precise modalities for execution, the AF may support consultancy service for financial and operational management of the CDF, but not any direct funding of CDF investments. Detailed procedures, including environmental and social screening procedures will be prepared prior to any such consultancy support.

⁵ This strategy will focus on needs assessment for skills development and a strategy for capacity building. The strategy will not lead to any investment plans for mine development or infrastructure construction.

document (EASSD) (Sections G and H). Rational and justification for application of these policies are provided below:

- ***Environmental Assessment OP/BP 4.01:*** The AF will not involve any investment and/or link to any downstream investment activities. Instead, the AF aims to strengthen policy, regulations, and institutional capacity of key agencies necessary to forge effective management and/or minimization of the potential negative impacts of development projects on local communities and local environment. The AF has been assigned as EA category B and an environmental management plan is required to mitigate potential negative impacts or enhance potential positive impacts. Given that the technical assistance (TA) to be provided under the AF is intended to build capacity of key agencies (DEPP, DEB, DEM, DESIA) to address investment issues during project development cycle (planning, construction, operation) including safeguards, an Environment and Social Safeguard Activities Documents (ESSAD) is prepared to document actions to be carried out under the AF to enhance potential positive impacts on safeguards. Given the nature of the TA, efforts will also be made to address other related policies such as natural habitats (OP/BP4.04), forests (OP/BP 4.12), physical cultural resources (OP/BP 4.11), and involuntary resettlement (OP/BP 4.12) throughout the TA activities under the OP/BP 4.01 umbrella.
- ***Indigenous Peoples OP/BP 4.10:*** The TA will not involve any investment activities, however, this TA will support various legal and institutional development that will impact on access to natural resources including land and livelihood opportunities. Also, the proposed development of Community Development Fund (CDF) may be conducted and/or applied in area where ethnic minority may be present. OP/BP 4.10 is thus triggered. The primary objectives of OP/BP 4.10 are to ensure that: (a) ethnic groups affected by Bank financed projects are afforded meaningful opportunities to participate in planning that affects them; (b) opportunities are provided to them to receive project benefits in a culturally appropriate manner; and (c) any project impacts that adversely affect them are avoided or otherwise minimized and mitigated. The policy requires that free, prior and informed consultations are carried out with indigenous peoples affected by a Bank financed project, leading to their broad community support; where such a broad community support is not ascertained, the project will not be implemented in areas where they are present or have collective attachment.
- The OP/BP 4.10 uses the term “Indigenous Peoples” in a generic sense to refer to a distinct, vulnerable, social and cultural group possessing the following characteristics in varying degrees: (a) Self-identification as members of a distinct indigenous cultural group and recognition of this identity by others; (b) Collective attachment to geographically distinct habitats or ancestral territories in the project area and to the natural resources in these habitats and territories; (c) Customary cultural, economic, social, or political institutions that are separate from those of the dominant society and culture; and (d) An indigenous language, often different from the official language of the country or region. It is important to note that the OP 4.10 refers to social groups and communities, and not to individuals.

D. National Legal and Institutional Frameworks

7. During 2010-2013, a number of laws and regulations related to natural resources and environmental management as well as those for the energy and mining development sectors in Lao PDR

were revised and many are being reviewed and updated. Organizational restructuring of the agencies responsible for the implementation of these laws and regulations also took place. This in response to the urgent need to ensure improved effective and sustainable use of natural resources in light of rapid development of hydropower and mining projects in the country. After the establishment of the Water Resources Administration (WREA) in 2007-08, the establishment of the Department of Environment and Social Impact Assessment (DESIA) in 2009, and the promulgation of the EIA decree (decree 112) in February 2010, another major institutional reform occurred in mid 2011-mid 2012. WREA was upgraded to Ministry of Natural Resources and Environment (MONRE) by combining the WREA agencies with the departments/divisions responsible for management and conservation of natural resources (land, forest, minerals) of the Ministry of Agriculture and Forestry (MAF) and the Ministry of Energy and Mines (MEM). The organizational structure at local level (Vientiane Capital, provinces, and districts) also changed accordingly. Below are key laws/regulations and agencies responsible/involved in the hydropower and mining sectors.

(i) Laws and Regulations.

8. As of the end of 2013, key laws and regulations related to hydropower and mining sectors are as follows:

- ***Environmental laws, decrees, and regulations.*** In December 2012, the National Assembly approved the revised Environmental Protection Law (EPL) and the regulations are currently being drafted. The revised EPL emphasises the needs for sustainable use of natural resources and effective management of environmental quality and identifies/clarifies objectives and scope of key measures necessary for forging achievement of law objectives, including those related to the Environmental Impacts Assessment (EIA) requirements, pollution control, and Environmental Protection Fund (EPF). MONRE is the lead agency responsible for ensuring effective implementation of the EPL. To facilitate effective implementation of the EIA decree established in 2010 (Decree 112) and the compensation and resettlement decree established in 2005 (Decree 192) a number of technical guidelines, manual, and/or standard documents, including a guideline on public involvement, have been prepared and some are formally approved by MONRE⁶. A standard environmental and social obligation (SESO) for hydropower project has also been developed and applied. However the EIA decree has been replaced by the EIA regulation issued by MONRE on 17 December 2013⁷. The EIA regulation assigns DESIA to be responsibility for the review and approval of the EIA process while the province through the provincial MONRE (PONRE) is responsible for review and approval of the Initial Environmental Examination (IEE) process.
- The compensation and resettlement decree (Decree 192) provides legal guidance on ways to address compensation and resettlement of affected population from investment projects. The decree was developed in 2005 with ADB support and is considered in line with international practices in principle. A technical guideline to implement the decree was also developed and it was approved in 2011. The decree and technical guideline are currently being updated.

⁶ Including guideline for implementation of compensation and resettlement decree (2011), guideline for EIA preparation (2012), guideline for IEE preparation (2013), guideline on public involvement (2013), manual for monitoring (2013), standard environment and social obligations (SESO) to be included in the concession agreement for power projects (2013).

⁷ The EIA regulation of 2013 will replace the EIA decree of 2010 (decree 112).

- On Ethnic Groups⁸, in Lao PDR the term Ethnic Groups (EG) is used to characterize a variety of cultural groups. Constitutionally, Laos is recognized as a multi-ethnic society and Article 8 of the 1991 Constitution states that “All ethnic groups have the right to preserve their own traditions and culture, and those of the Nation. Discrimination between ethnic groups is forbidden”. The 1992 Part policy on EG focuses on realizing equality between EG and gradually improving the lives of EG while promoting their ethnic identity and cultural heritage. The Lao Front for National Construction (LFNC) introduced an official ethnic classification into forty nine main groups comprising four ethno-linguistic facilities, namely the Tai-Kadai, the Mon-Khmer, the Tibeto-Burmese, and Hmong-Mien which are distributed from the north to the south of the country. Out of the four regions the north has the highest number of districts with ethnic groups comprising about 87% of the region population while the east has the second highest number of 69% and followed by the southern and central regions, each of which have ethnic populations of about 50%⁹. Table 1 below summarizes the main characteristics associated with the four ethno-linguistic groups in Lao PDR.¹⁰ In mid 2013, the LFNC established the national guideline for Consultation with Ethnic Groups.

Table 1: Main characteristics of ethnic groups in Lao PDR

Ethno-Linguistic	Language Family	Summary Characteristics
Tai Kadai	Lao Phoutai	65% of the population, living mostly along the economically vibrant Mekong corridor along the Thai border or in Northern lowlands; settled cultivators or urban dwellers; migrated into Lao PDR since the 13th century ; Buddhists.
Austroasiatic	Mon Khmer	24% of the population, living mainly in highland areas in the North and Central South, smaller groups (Khmou) live also in the Northern lowlands; the most diverse ethnic group and the first one to inhabit large areas of Lao PDR; animist and shifting cultivators; fairly assimilated due to hundreds of years of interaction with Lao-Tai, single communities live in isolation as hunter-gatherers.
Hmong - lu Mien	Hmong Yao	8% of the population, living mainly in mid- and upland areas in the North; Hmong is the largest subgroup; animist with strong ancestor cults, although many converted to Christianity; typically shifting cultivators, migrated to Lao PDR in the 19th century.
Chine – Tibetan	TibetoBurman	3% of the population, living mainly in poorly-connected upland areas in the North; animist and shifting cultivators; migrated to Lao PDR in the 19th century.

Other safeguard related laws/regulations. In addition, to facilitate effective management of natural resources, a number of laws, regulations, and international commitments related to management and/or conservation of water, land, forests, protected areas, aquatic and wildlife have been promulgated and/or are being reviewed/ revised. The decree on Protection Forest was

⁸The official terminology for describing the diverse population of Lao PDR which was introduced with the 1991 Constitution, and it is considered equivalent to the definition described as the Indigenous Peoples according to OP4.10.

⁹National Biodiversity Strategy to 2020 and Action Plan to 2010, 2004.

¹⁰Lao People’s Democratic Republic: Northern Region Sustainable Livelihoods Development Project, Indigenous Peoples Development Plan, Document Stage: Final Project Number: 35297, August 2006, Prepared by the Government of Lao People’s Democratic Republic for the Asian Development Bank (ADB), page 5 and NSC/CPI, ADB, SIDA and the World Bank, 2006

issued in 2010 while the Water and Water Resources Law (1996) is being revised and expected to be submitted to the National Assembly in mid 2014. Other laws/regulations are being reviewed/revised including the Forestry Law (1996, revised 2007), the Aquatic Animal and Wildlife Law (2007), the Land Law (amended 2003), and the decree (164/PM in 1993) on National Biodiversity Conservation Areas (NBCAs). Other relevant laws, regulations, international commitments include the Law on Preservation of Cultural, Historical, and Natural Heritage (June 20, 1997), the 1995 Mekong River Commission (MRC) Agreement, and other international conventions (biodiversity, climate change, RAMSAR¹¹, etc.). On pollution control, while regulations on the discharge of toxic wastes and environmental standards for industrial operations do exist, they focus mainly on the sugar mill, textile and garment, and pulp and paper mill industries. There are national standards (ambient and emission) for air, noise, water, toxic substance and they are being reviewed. No effluent/emission or ambient standards have been defined with regard to hydropower and mining operations. Where national standards do not exist, the operators have the discretion to propose different standards.

- ***Electricity Law and Minerals Law:*** Hydropower development is governed by the Electricity Law of 1997, updated in 2008, and revised in 2012. The 2012 Electricity Law clearly defines the objectives and requirements for ensuring sustainable development, safety, and efficiency of the electricity business operations including the responsibility of the project developers to pay for the costs to mitigate the negative impacts and to share the project benefits with local peoples. The Mining Law of 1997, updated and renamed the Minerals Law in 2008, and revised in 2011 governs the mining development and operation. The laws define sector operations, stipulate restrictions, and define operators' technical obligations, including those related to safeguards.

(ii) Institutions

9. As of the end of 2013, key institutions related to hydropower and mining sector and their roles in the implementation of the Project are as follows:

- ***MONRE:*** Since mid 2012, MONRE is the lead agency responsible for effective management of natural resources and environment including water resources, forest/biodiversity, land, minerals, and environmental quality including EIA process. It is a new ministry and comprises 17 agencies¹² including DESIA, the Department of Pollution Control (DPC), the Department of Water Resources (DWR), the Department of Meteorology and Hydrology (DMH), the Department of Disaster Management and Climate Change (DDMCC), the Department of Forest Resources Management (DFRM), the Department of Land Management (DOLM), the Department of Land (DOL), and the Department of Geology and Minerals (DGM), which is responsible for geological survey and data management including award of prospection and exploration permits. The technical and management capacity of

¹¹ Convention on Wetlands of International Importance Especially as Waterfowl Habitat

¹² Other agencies include the Cabinet office, the Department of Internal Audit, the Department of Personnel and Organization (DPO), the Department of Planning and Coordination (DPC), the Department of Environmental Quality Promotion (DEQP), the Natural Resources and Environmental Research Institute (NREI), the Natural Resources and Information Center, the Lao National Mekong Committee.

these agencies remains weak due to limited number of qualified staff and budget. Most of their activities are carried out with technical assistance and operational support from international financing and/or donor agencies¹³. DESIA, DFRM, DWR, DMH, and DGM have actively participated in the implementation of the HMTA project and this will be continued under the AF. Implementation of technical assistance and capacity building activities related to safeguard issues for hydropower and mining development under the original project has facilitated effective coordination between these agencies and MEM agencies during the planning stage at national level. The AF will continue to provide technical assistance and capacity building support to DESIA and DFRM and MEM agencies to monitor safeguard performance of the hydropower development projects.

- **MEM:** MEM is the key ministry responsible for oversight of hydropower and mining development in Lao PDR. Since mid 2012, MEM agencies comprising the Department of Energy Policy and Plan (DEPP), the Department of Energy Management (DEM), the Department of Energy Business (DEB), the Institute of Renewable Energy Promotion (IREP), the Department of Mines (DOM), the Cabinet Office, the Department of Personnel and Human Resources, and the Department of Audit. Responsibility of key agencies with respect to hydropower development and mining operation as well as to the Project implementation are as follow:
 - *For the energy sector*, DEPP is responsible for policy and planning for energy development including integration of environmental and social safeguards while DEM is responsible for regulations and standards and technical management/monitoring of the energy projects. DEB (former DEPD) is responsible for the promotion and monitoring of concessions agreements between the Government and private investors. These agencies are the key implementing agencies of Component 2 under the original HMTA project and this arrangement will continue under the AF.
 - *For the mining sector*, DOM is the key agency responsible for management and administration of mine investment activities, including all activities related to mine concession management, inspection, and monitoring of performance requirements, health and safety issues, and environmental management in existing operations. DOM is the implementing agency of Component 3 under the original project and this arrangement will continue under the AF.
 - The Department of Personnel and Organization (DPO) is among the key implementing agencies for Component 1. The Cabinet Office is responsible for HMTA administration and management (Component 4). These arrangements will continue under the AF.
- Policy supports regarding the need for further mainstreaming safeguard into the development process of hydropower and mining projects within MEM is high. Implementation of TA and capacity building activities related to safeguard has provided clear legal requirements, enhanced active involvement of decision makers, and increased capacity of technical staff on

¹³ The key ones are the World Bank, IFC, AusAID, ADB, the Mekong River Commission (MRC), Sweden, Finland, Germany, and UNDP.

ways to address safeguard issues during the planning, supervision, and monitoring of the project development including safeguards.

- **Mass Organizations:** The Lao Front for National Construction (LFNC), which has an Ethnic Affairs Department, is a mass organization established to be responsible for development and management of ethnic groups in Lao PDR. It reports directly to the Party and has established its own network at central and local level. Other mass organizations include the Lao Women's Union (LWU), the Labour Unions, and the Youth Groups.
- **Other key agencies.** MAF is responsible for ensuring effective management of agriculture, forests, and fisheries/aquaculture while the Ministry of Public Works and Transport (MPWT) is responsible for management of land and water transport including management of domestic water supply and sanitation. The Environmental Protection Fund (EPF), in operation since 2006, can play an important role in providing financial resources to promote institutional capacity building, investment, and conservation of biodiversity provided there are funding sources. EPF reports directly to the EPF board chaired by a deputy prime minister and an EPF office provides management and secretarial support to EPF operations. At present, the financial sources for the EPF operating costs are from the interest from the EPF endowment (which was provided through an ADB loan in 2005) and limited contribution made by developers (mostly small miners and Thuen Hinboon hydropower). The World Bank support for the second Lao Environment and Social Project (LENS2) is being considered.
- **The Provinces:** In addition to the central agencies, provincial departments of MONRE (PONRE), MEM (PDEM), MAF (PAFO), and MPWT (DPWT) exist in each of the 17 provinces. According to the GOL policy on decentralization as instructed by the National Assembly, the provincial and district authorities have begun to play a key role in planning, decision making, and monitoring of investment activities. For the energy sector, provincial departments are responsible for approval and monitoring of energy generation projects equality or less than 15 megawatt while the central agencies remain responsible for approval and management of large-scale investments. For the mining sector, the provincial departments are responsible for approval and monitoring of investments of less than US\$2 million. For natural resources and environment, PONRE in principle play a key role in management of water, land, and forest resources as well as on environmental management including conducting review and monitoring of the IEE process and ECC issuance. However, their capacity and financial resources are limited at present and significant technical assistance and capacity building at provincial and district levels will be necessary.

E. Objective and Principles of ESSAD

10. This ESSAD aims to document safeguard activities to be carried out as part of the TAs and capacity building activities during the implementation of the project, to clarify and ensure that all activities supported under the project will comply with the World Bank's environmental and social safeguard policies. This ESSAD is updated to reflect changes introduced to the project scope under the AF. The basic principles adopted in the ESSAD are as follows:

- *Component 1:* Safeguard training will be provided to MEM staff as part of the training courses to be carried out under AF as well as the follow-up training for MEM staff to be carried out as part of DPO activities after the AF.
- *Component 2:* All TAs to be provided and capacity building activities to be carried out under this component will incorporate safeguard aspects into every steps of project development cycle. Assessment of potential impacts of the AF will also be made in the context of a river basin. All policies, regulations, and technical guidelines produced from this component will be consulted with key agencies and other stakeholders including LFNC.
- *Component 3:* All TAs to be provided and capacity building activities to be carried out under this component will incorporate safeguard aspects into every steps of project development cycle. The CDF will provide equal opportunity to ethnic groups to benefit from the CDF scheme and/or be aware of the potential negative impacts as well as providing guidance on measures to mitigate potential negative impacts on ethnic groups. If the ethnic groups conclude that the CDF program will be beneficial to them, and that any adverse impacts can be mitigated, a plan to assist them will be developed based on consultation with ethnic groups and the local LFNC representatives. The community should also be consulted to ensure that their rights and culture are respected. The assistance may also include institutional strengthening and capacity building of ethnic villages and community groups working with the CDF program. The basic principles on ethnic groups consultation and actions is described in more detailed in Section G. All policies, regulations, and technical guidelines produced from this component will also be consulted with key agencies and other stakeholders including LFNC.
- *Component 4:* Safeguard training, monitoring, reporting will be carried out under this component. Information will be shared and disclosed periodically.

F. HMTA Implementation Progress, Potential Impacts on Safeguard, and Challenges

11. Below highlights key findings on the progress, potential impacts on safeguards, and challenges/lessons learnt from the implementation of safeguard related activities in light of the HMTA project restructuring in early 2013 and rapid assessment of the potential positive impacts on safeguard capacity building conducted in September 2013.

(i) HMTA Implementation progress

12. *Component 1 (Joint Hydropower and Mining Learning Program):* The component was designed to build technical capacity and generating public awareness including safeguards through: (a) learning program for sector professionals, (b) education sector support, and (c) outreach and information sharing and safeguard training incorporated into the activities as appropriate. During the midterm review, the investment towards outreach and information sharing was dropped. Efforts are being made to promote safeguard integration into the human resources development process both for hydropower and mining sectors as well as to disseminate safeguard related information through MEM's website and other project activities as appropriate. To enhance human resources development and improve public private cooperation/partnership, a capacity building program has been initiated, and two technical working groups for both hydropower and mining sectors (led by the private sectors and comprised of representatives from Education Institutes and the government agencies) have been established to plan and implement the program.

13. *Component 2 (Hydropower Sector Development)*: The component was designed to build capacity in the entire process of hydropower development and operation to enhance sustainability of hydropower sector through: (a) water resource management and hydropower planning, (b) hydropower concession management, and (c) hydropower development management and support to implementation of the National Policy on Environmental and Social Sustainability of Hydropower Sector (NPSH) with the safeguard issues and management being treated as an integral part of these efforts. Significant progress has been made. Below the areas expected to have significant positive impacts on safeguards:

- *Subcomponent 2A*: Key activities include consulting services on: (i) fiscal policy option study, (ii) system-avoided cost study, and (iii) hydropower planning and DEPP capacity building. An international firm (EM Mercados) carried out the fiscal policy options study and a final report was submitted in August 2013. The recommendations and follow-up actions are being discussed among the key agencies. An international consulting firm (Fitcher) for the System Avoided Cost study has been mobilized and the first mission was conducted in November 2013. DEPP set up a core team comprising staff from DEPP, DEM, DEB, and EDL to work closely with the consultant and report the progress periodically to the DEPP manager. An international consulting firm (IDOM) for capacity building on hydropower planning has also been on board and the first mission was conducted in December 2013. DEPP has also set up a core team comprising staff from DEPP, DEM, DEB, and other agencies from MONRE (DWR, NERI, DESIA, and LNMC) to work closely with the consultant. There will be no negative associated impacts linked to this planning exercise.
- *Subcomponent 2B*: The consulting service (SOFRECO) for the development of concession agreement (CA) standard including environment and social safeguards is on-going and expected to be completed in early 2014. The scope of the service includes development of: (a) detailed rules and administrative procedures for supervision and reporting; (b) a standard CA for new projects including the environmental and social obligations; and (c) procedures for inspection and supervision of on-going hydropower projects against CAs. DEB has set up a coordination committee to oversee the implementation of SOFRECO consulting service. A national consultant has been mobilized to develop specific guidelines for approval of the IPP projects by the National Assembly. Support has been cancelled to assist DEB in building its database and implementation, due to limited budget mobilization for national consultants.
- *Subcomponent 2C*: Updating the National Policy on Environment and Social Sustainability for Hydropower sector (NPSH) has resulted in mainstreaming safeguard requirements, including benefit sharing with local communities, into the revised Electricity Law approved in 2012. With additional technical assistance from IFC, the NPSH was expanded to incorporate technical, engineering, and other aspects and renamed: “Policy on Sustainable Hydropower Development” (PSHD). The PSHD will be applied to all hydropower projects with capacity larger than 15 MW incorporating engineering and other technical aspects throughout the project development cycle (planning, construction, and operation/transfer) and the final draft is being submitted to MEM for approval. An inter-ministerial committee (PSHDC) has been established to facilitate MEM approval and oversee the PSHD implementation. DEPP is the secretariat to the PSHD committee. DEPP has also conducted a series of field visits (project-by project-monitoring and on-the-job training) to the on-going hydropower projects and engaged provincial agencies and project owners on the ground. DESIA also took the lead in the study visits to observe safeguard

performance and issues in Nam Ou 2, 5, 6 in August 2013. DEPP plans to prepare a status report and conduct an annual workshop in 2014.

14. *Component 3 (Mining Sector Development)*: This component was designed to build capacity through: (a) improvement of sector governance and the enabling environment, (b) strengthening of government oversight capacity, and (c) program to promote mineral development. The safeguards and environmental protection issues are addressed through training in environmental inspections, including mitigation techniques (air, water, soil, ambient noise and conditions) based on internationally recognized standards, scientific inspection and measurement techniques. These activities have been developed in consultation with World Bank safeguard specialists and following Bank standards and procedures. During the midterm review, the activities under (c) were dropped in view of the moratorium since 2011 on the issuance of new mining licenses to allow the authorities room for a comprehensive review of operators' performance with the intent to correct and, if necessary, revoke non-compliant and inactive licenses. Activities under the broader public information campaigns and the awareness raising (3b) have been narrowed to focus on the development of mechanisms for community development funds¹⁴. Significant progress has been made regarding capacity building activities to improving governance (3a) and strengthening regulations (3b) including those related to safeguards, for which a consultancy assignment started in early 2014. The revised mining law (2011) was promulgated and disseminated including agreement on roles and responsibility of the national and local agencies in 2012. A legal consultant has been mobilized and completed the draft regulations including safeguard aspects to be identified in close consultation with key agencies. The Bank environment and legal specialists have been consulted during TOR preparation and throughout the assignments to ensure that Bank standards are incorporated and adopted. Another international consultant was mobilized in late 2013 to assist preparing specific regulations related to safety and occupational health, including a model investment agreement, community benefit sharing provisions, and environmental/social protection provisions including development of community development fund. The support to community development funds draws on international best practices and analytical work which has been conducted at a global scale. A consulting service on fiscal policy option for mining sectors has also been provided and this technical assistance was completed in 2013. DOM has also initiated on-the-job training and inspection on the ground¹⁵. With the HMTA and the BGR program, MEM staff has acquired hands-on experience on monitoring and inspection of physical environmental impacts (air, water, soil pollution) as well as best practice mitigation measures and ensuring compliance with relevant technical, environment and social, occupational health and safety regulations. The AF activities will have no direct link with any downstream infrastructure investment in the mining or hydropower sector.

(ii) HMTA original project potential impacts on safeguards and key challenges

15. A review of the implementation progress of the original project suggests that the technical assistance (TA) and capacity building activities could have significant positive impacts on safeguard capacity building as the regulations and/or guidance were developed in line with international practices by qualified international consultants and the key ones could be highlighted as follows:

- Under Component 1, the potential impact on safeguard capacity building is high in the medium and longer terms if safeguard considerations are integrated into technical training courses, giving the opportunity to promote awareness and improve knowledge on safeguards for MEM staff at both central and local levels. Increasing awareness and applied knowledge on environmental and

¹⁴ The subcomponent 3b's name has been changed to *Strengthening of Government Oversight Capacity and Cadastre Management*.

¹⁵ A separate technical assistance (from the German government through BGR) and capacity building of DOM and PDEMs on mining inspection and management has been carried out focusing on 9 PDEMS first.

social management (through developed regulations and technical guidelines) could improve effectiveness of natural resource uses and therefore help minimizing potential negative impacts of projects development. In addition, the on-going cooperation on human resource development program through the two working groups could compliment the GOL efforts to address the human resources needs for the sectors and provide opportunities to demonstrate ways to improve cooperation among key stakeholders.

- *Component 2:* This component could have significant benefits on safeguard capacity building for the prevention and mitigation of potential negative impacts in hydropower development. Development, approval, and application of standard CA document (Subcomponent 2B) to all new hydropower projects should enhance transparency and effectiveness of the independent power producer (IPP) process and fair competition among investors which could promote the interest of quality investors and facilitate effectiveness of regulatory measures including monitoring of issues related to environment and social safeguard, occupational health, and safety. Improving clarity on the responsibility of agencies in the IPP process could enhance coordination, management, and monitoring of the CA compliance including technical, engineering, economic, finance, and safeguards aspects. The process of updating the PSHD (Subcomponent 2C) has facilitated improved coordination and cooperation among agencies and safeguard issues are now being widely discussed. The approval of the PSHD is expected in early 2014. AF support is considered critical to facilitate effective cooperation among key agencies on monitoring of safeguard requirements (EIA, PAPs, consultation, information disclosure, watershed conservation) on the ground during the next 5 years. Undertaking project-by-project monitoring and on-the-job training through field visits has helped increasing knowledge and experience of key staff, facilitating cooperation of national and local agencies, and increasing awareness of the project developers on the need to take effective actions on safeguard mitigation measures on the ground. Periodical monitoring and reporting the PSHD implementation status to decision makers and the public could help enhance transparency and performance of the sector.
- Results from the fiscal policy option study provided the basis for technical and policy discussion regarding ways to enhance government capacity with respect to revenue collection and revenue sharing. In light of the needs for the agencies and the provinces to have operational budget for planning, monitoring, and management, the establishment of effective mechanism for revenue sharing and/or benefit sharing could enhance capacity of MEM/MONRE agencies to ensure compliance performance including safeguards.
- The limited capacity (qualified staff and government's budget) of all key agencies of MEM and MONRE are the main challenges for ensuring achievement of the potential impacts. Through a series of technical meetings it is clear that achieving sustainable hydropower development in Lao PDR will require clarity and agreement on the following: (a) water sharing among water users, (b) effective implementation of the IPP process, (c) effective implementation of safeguard requirements, (d) compliance monitoring, (e) revenue and benefit sharing, and (f) effective coordination and cooperation among agencies. A draft action plan is being prepared by key agencies to ensure that: (a) appropriate legal instruments (laws, decrees, regulations, operation procedures) and technical guidelines/manuals for implementation and monitoring/reporting, including those related to safeguards, are timely developed/updated and (b) the agencies have adequate capacity to forge effective implementation of these regulations. Bank specialists will continue to review outputs and ensure that proposed procedures are aligned with Bank requirements. Building DEM capacity to ensure effective implementation and compliance monitoring of technical/engineering aspects is also considered priority.

- *Component 3*: Potential impacts of HMTA on safeguard capacity building for the mining sector would focus on strengthening sector regulations, procedures, and policies at central level. Development of key regulations, operational procedures and standardized contract agreement with investors (Subcomponent 3A) including well-defined and uniform environmental and social performance standards, would enhance the capacity of the government and agencies during planning, impact assessment, approval, monitoring, and inspection. Government's current review and evaluation of all mining licenses testifies a shift from case-by-case enforcement to introduction of more uniform standards and enforcement mechanisms. The development and adoption of sector-specific regulations on occupational health and safety rules and environmental standards and other related procedures are expected to further enhance clarity of roles and responsibilities among key agencies and improve performance in addressing these aspects on the ground. Adoption and application of a standardized terms and conditions for mine investment agreements have started to enhance transparency and facilitate effective implementation of regulatory measures by agencies including monitoring of issues related to environment and social safeguards, occupational health, and safety. Addressing financial aspect including building technical capacity on financial model could help ensuring adequate funding for implementation of safeguard activities while designing regulations and guidelines for the establishment of community development funds could help increase benefit sharing to local communities affected by mining activities as well as encourage active participation of local communities in addressing safeguard issues. Adoption of standardized reporting templates and monitoring systems (Subcomponent 3B) would strengthen DOM and PDEMs capacity for inspection along the lines of international best practice.
- Drafting of key regulations and operation procedures and contract agreement with investors (Subcomponent 3A) including safeguard aspects could enhance the capacity of government and agencies during planning, impact assessment, approval, monitoring, and inspection. One of the challenges for meeting the expectation is DOM's ability to effectively apply the regulations in light of limited number of qualified staff, budget constraint, and the lack of effective coordination mechanism to address the safeguard issues. Additional technical assistance and capacity building of DOM and PDEMs will be necessary for the effective implementation of the regulations and various measures that have been/will be established under HMTA. Priority activity should include the establishment of coordination mechanism/ procedures for DOM, DESIA, provinces, and other key agencies (DWR) to address the urgent issues related to negative impacts of sand and gravel mining in a river/stream and mineral extraction that create issues related to suspended solid, toxicity, dust, noise, and safety to local people and environment.

G. Potential Impacts of the AF Activities and Additional Safeguard Measures

(i) Potential impacts

16. Similar to the original project, the overall impacts of AF are expected to improve environmental and social capacity of MEM agencies. The proposed activities (Section B) are related to technical advisory and will not have environmental or social foot-prints or any linkage to future investments in the mining or hydropower sectors. Instead, the project aims to further strengthen the technical and management capacity of MEM and other key agencies to implement regulations, technical standards/guidelines, and oversight investment activities including those related to environmental and social safeguards. The support to PSHD implementation and the mining sector strategy which are planned as part of the AF will focus on institutional capacity building, and will not promote investments in project development nor in infrastructure. The risk of not improving regulations and/or building capacity of key

agencies will be high given limited financial and institutional capacity of key agencies and provinces. The AF is classified by the World Bank as safeguard Category B and the OP/BP 4.01 and OP/BP 4.10 are triggered. The policies were triggered to (a) ensure that the technical assistance and capacity building activities would be designed and implemented taking into account the needs for safeguard capacity building necessary for the effective implementation and management of measures to mitigate the potential negative impacts of hydropower and mining activities on the ground; and (b) ensure the participation of ethnic communities in the consultations regarding development of policies, legal framework and regulations financed by the AF for the hydropower and mining sectors

19. Implementation of the proposed AF activities would continue to ensure that TA and capacity building activities further enhance the positive impacts on safeguard capacity building expected from HMTA. Positive impacts are expected in particular when the fiscal policy reform is complete, clear revenue collection and sharing mechanism are agreed upon and operationalized, improved project monitoring and evaluation (M&E) and reporting systems are institutionalized. Key potential impacts are highlighted as follows:

- Under Component 1, the HMTA-AF project will continue to promote awareness and improve knowledge on safeguards for MEM staff at both central and local levels through integrating safeguard considerations into technical training courses. This will further enhance knowledge and understanding of MEM staff on safeguard issue and increase opportunity for strengthening effective coordination among key stakeholders.
- Under Component 2, the operationalization of the improved CA (Subcomponent 2B) and capacity building of key agencies, particularly on compliance monitoring could help demonstrating the actual compliance status of the CA and safeguard requirements. Updating the regulations, technical standards, and compliance monitoring on engineering requirements (Subcomponent 2C) could strengthen MEM capacity to ensure safety performance. Implementation of the agreements on fiscal policy and capacity building of key agencies of MOF (Subcomponent 2A) could help facilitating effective management of financial aspect in hydropower sector that could increase revenue collection (royalties and taxes) as well as enhance transparency on revenue sharing, which is critical for ensuring sustainable development of hydropower. Implementation of the PSHD (Subcomponent 2D) could further help facilitating effective cooperation among key agencies (MEM/MONRE/MOF) and other stakeholders as well as enhancing transparency of hydropower development.
- Under Component 3, proposed AF activities would further strengthen the capacity of DOM, MOF, and the provinces to undertaking oversight activities on the ground according to the regulations and standards that have been developed under the original project including those related to safeguards. The AF activities to support the consultation and information dissemination on the establishment of community development funds (CDF) would help facilitate the operation of benefit sharing scheme as part of the mining operations. The procedures and guidelines have been influenced by best practice from across the globe. Scope of AF support on the CDF is limited to the development of guidelines and regulations (including guidelines for environmental and social review prior to execution of CDF investments), and the AF will not finance any investment activities to be identified or carried out under the CDF. Subject to the pace of implementation and precise modalities for execution, the AF may support consultancy service for financial and operational management of the CDF, but not any direct funding of CDF investments. Detailed procedures, including environmental and social screening procedures will be prepared prior to any such consultancy support. The potential impacts of future implementation of CDFs by mining operators and communities would be positive by increasing opportunity for benefit sharing to local communities. Implementation of the agreements on fiscal

policy regime and capacity building of key agencies of MOF (Subcomponent 3A) could help facilitate effective management of financial aspect in mining sector that could increase revenue collection (royalties and taxes) as well as enhance transparency on revenue sharing.

17. *Public consultation and information disclosure:* PSO has prepared the ESSAD (both in English and Lao) and conducted a public consultation on the AF focusing on the ESSAD on 4 March 2014. The participants included representatives from key agencies, provinces, LFNC, and research institutes, and the WB. Comments from the consultation focused mainly on the needs to build capacity of the agencies and provinces as well as to provide adequate budget to them. Other comments call for improved inter-agencies coordination, knowledge transfer through on-the-job training and M&E systems for effective implementation. Representatives from research institute highlight the need for technical assistance and supports for purchase of laboratory equipment for sample collection and analysis (air, water, noise, etc.).

(ii) Additional safeguard measures to be carried out under AF

18. To be in line with OP/BP4.10 and to ensure that safeguard monitoring will be made systematically the following actions will be carried out:

- The PSO in close coordination with the agencies will conduct a public consultation on the PSHD and/or CDF at least one time per year. The participation of ethnic communities in the dialogue on the development and operationalization of policy, and legal and regulatory frameworks will be achieved through national and regional consultations organized in Vientiane Capital and in the northern and southern parts of the country. Representatives of ethnic minorities, including the Lao Front for National Construction (LFNC), which is the official national mechanism to facilitate dialogue with the diverse ethnic groups, the National Assembly, and development partners, will attend the consultations. The AF will engage local people in the implementation of the upstream work through dissemination workshops, training, and involvement in the monitoring of the CA, where feasible. Specific actions on CDF are described in more details in (iii) below.

The PSO will ensure that the safeguards consideration including gender is integrated into the technical training courses and the human resources development activities to be carried out under Component 1 including those to be carried out by the two technical working groups for hydropower and mining. PSO will closely monitor the implementation progress related to safeguards and include the results in the project progress report. PSO will also conduct safeguard training at least one time per year during the first 3 years (2014, 2015, and 2016).

- MEM implementing agencies (DEPP, DEB, and DEM) will ensure that safety and environmental and social safeguard are effectively integrated into MEM policy and procedures to be applied to hydropower projects throughout the development cycle (planning/awarding CA, construction, and operation, and closure/transfer) and report the implementation progress and results of the safeguard monitoring in the component/subcomponent progress reports. Selection of the additional river basins for the modeling will be made in close consultation with the WB.
- DOM will ensure that safety and environmental and social safeguard are effectively integrated into MEM policy and procedures to be applied to mining projects throughout the development cycle (planning/awarding CA, construction, and operation, and closure) and report the implementation progress and results of the safeguard monitoring in the component/subcomponent progress reports.

- For mining, a process of consultation among agencies, local authorities, and local communities on benefit sharing will be facilitated by DOM. Consultations will be a key element in the development of regulations and guidelines for community development funds (CDF). To be in line with OP4.10, the CDF regulations and guidelines to be developed under the AF will incorporate the basic principles and procedures on consultation with ethnic groups and/or development of Ethnic Group Development Plan (EGDP) as needed (see Section E) and ensure that its performance is properly included in the AF progress report. Gender aspects will be explicitly addressed and promoted during the development of guidelines and regulations for the CDF. A national guideline for consultation with the ethnic groups has been developed by the Lao Front for National Construction (LFNC) and it will also be observed during the consultation of the AF as appropriate. The PSO will supervise and monitor the implementation progress of safeguard activities and include the results in the project progress report. The WB team will periodically monitor the implementation progress related to safeguard activities throughout the project. The report will also update information on consultation and/or meeting with ethnic groups.

(iii) Ethnic groups consultation and actions for the CDF

19. Since the CDF regulations/guidelines will be applied throughout the country and may affect ethnic groups positively and negatively. The CDF should therefore provide some general principles and procedures that will be applied during the application of the CDF. To be in line with OP 4.10, the following principles will be incorporated into the CDF regulations and/or guidelines and applied accordingly:

(a) Screening for Ethnic Groups:

- Conduct a screening of ethnic groups present to determine if ethnic groups reside in the program area through a preliminary identification process which may include a rapid social assessment and/or consultation with local authorities and local communities and a visit to the program area. Prior to the visit, the CDF planner will send a notice to the communities informing their leaders that they will be visited by the CDF planner and local authorities and consultation will be conducted on the CDF program. The notice will request that the communities invite to the meeting representatives of farmers, women associations and village leaders for discussion on the CDF program. During the visit, the community leaders and other participants will present their views with regards to the CDF program. During the visit, personnel with social science training or experience will undertake a screening for ethnic group population with the help of ethnic group leaders and local authorities.
- The screening will check for the following: (i) names of ethnic groups in the affected village; (ii) total number of ethnic groups in the affected villages; (iii) percentage of ethnic people in affected villages; and (iv) number and percentage of ethnic households within a described zone of influence of the proposed activities. The zone of influence should include all areas in which subproject-related benefits and adverse impacts are likely to be relevant. If the results show that there are ethnic group communities in the zone of influence of the CDF program, a social assessment and a “free, prior, and informed consultation” will be conducted for those areas.

(b) Social Assessment

- The social assessment (SA) will be undertaken by qualified social scientists (or consultants). The SA will gather relevant information on the following: demographic data; social, cultural and economic situation; and social, cultural and economic impacts - positive and negative. The findings of the social assessment is described in a separate report of the CDF program. For small scale activities with no direct impacts on indigenous communities, the report is short and includes a brief overview of the ethnic communities affected by the activities/program, how the activities/program implementation will address the particular circumstances of ethnic groups, and how they will participate and be consulted during implementation.
- For more complex activities/program a more elaborate report is required and should include the following elements, as needed: (i) A description, on a scale appropriate to the activities/program, of the legal and institutional framework applicable to the ethnic groups; (ii) Baseline information on the demographic, social, cultural and political characteristics of the affected indigenous communities, and the land and territories which they traditionally owned, or customarily used or occupied and the natural resources in which they depend; (iii) Description of key project stakeholders and the elaboration of a culturally appropriate process for consultation and participation during implementation; (iv) Assessment, based on free, prior, and informed consultation with the affected ethnic groups, of the potential adverse and positive effects of the activities/program including an analysis of the relative vulnerability of, and risks to, the affected indigenous communities given their distinct circumstances, close ties to land, and dependence on natural resources, as well as their lack of opportunities relative to other social groups in the communities, regions, or national societies they live in; and (v) Identification and evaluation based on free, prior, and informed consultation with the affected ethnic groups, of measures to ensure that the ethnic groups receive culturally appropriate benefits under the project and measures necessary to avoid adverse effects, or if such measures are not feasible, identification of measures to minimize, mitigate, or compensate for such effects.

(c) Free, Prior, and Informed Consultation

- Main objectives of a free, prior, and informed consultation is to ensure that the affected ethnic groups are informed about the objective and scope of the programs/activities and potential benefits and/or negative impacts on local communities and/or ethnic groups. The free, prior and informed consultations may be conducted through a series of meetings, including separate group meetings: ethnic village chiefs; ethnic men; and ethnic women, especially those who live in the zone of influence of the proposed work under subproject. Discussions should focus on potential impacts, positive and negative; and recommendations for design of program/activities. If the social assessment indicates that the potential impact of the proposed activities/program will be significantly adverse or that the ethnic community rejects the proposal, the CDF planner will not be proceed with the activities/program and therefore no further action is needed. If the ethnic group supports the activities/program implementation an Ethnic Group Development Plan (EGDP) will be developed (see (d) below) to ensure that the ethnic groups receive culturally appropriate opportunities to benefit from the activities/program, and to address any concerns or negative impacts associated with the activities/program.
- In most cases, this process is best done as part of the social assessment although consultations are likely to continue after its completion. The extent of consultations depends on the

activities, their impacts on local communities and the circumstances of affected ethnic groups. At a minimum (for the activities with no impacts or direct interventions with the ethnic groups), local communities are informed about the activities, asked for their views on the activities/program, and assured that they will not be affected during the activities/program implementation. For the activities/program affecting ethnic groups, whether positively or adversely, a more elaborate consultation process is required. This may include, as appropriate: (i) Inform affected ethnic groups about project objectives and activities; (ii) Discuss and assess possible adverse impacts and ways to avoid or mitigate them; (iii) Discuss and assess potential project benefits and how these can be enhanced; (iv) Discuss and assess land and natural resource use and how management of these resources may be enhanced; (v) Identify customary rights to land and natural resource use and possible ways of enhancing these; (vi) Identify and discuss (potential) conflicts with other communities and how these might be avoided; (vii) Discuss and assess food security and how it might be enhanced through project interventions; (viii) Elicit and incorporate indigenous knowledge into project design; (ix) Facilitate and ascertain the affected communities' broad support to the project; (x) Develop a strategy for indigenous participation and consultation during project implementation, including monitoring and evaluation.

(d) Ethnic Groups Development Plan (EGDP)

- The EGDP will describe consultation processes and results, and subsequent design considerations to ensure that ethnic groups benefit from subproject activities, and that measures are provided to mitigate any adverse impacts on them.
- In line with OP/BP 4.10 Annex B, an EGDP should be prepared in a flexible and pragmatic manner, and its level of detail varies depending on the specific project and the nature of effects to be addressed. If appropriate, the EGDP should include the following elements: (i) A summary of the legal and institutional framework applicable to Indigenous Peoples in the area and a brief description of the demographic, social, cultural, and political characteristics of the affected Indigenous Peoples' communities, the land and territories that they have traditionally owned or customarily used or occupied, and the natural resources on which they depend; (ii) A summary of the social assessment; (iii) A summary of results of the free, prior, and informed consultation with the affected Indigenous Peoples' communities that was carried out during project preparation and that led to broad community support for the project; (iv) A framework for ensuring free, prior, and informed consultation with the affected Indigenous Peoples' communities during project implementation; (v) An action plan of measures to ensure that the Indigenous Peoples receive social and economic benefits that are culturally appropriate, including, if necessary, measures to enhance the capacity of the project implementing agencies; (vi) When potential adverse effects on Indigenous Peoples are identified, an appropriate action plan of measures to avoid, minimize, mitigate, or compensate for these adverse effects; (vii) The cost estimates and financing plan for the EGDP; (viii) Accessible procedures appropriate to the project to address grievances by the affected ethnic groups arising from project implementation. When designing the grievance procedures, the Applicant takes into account the availability of judicial recourse and customary dispute settlement mechanisms among the ethnic groups; and (ix) Mechanisms and benchmarks appropriate to the project for monitoring, evaluating, and reporting on the implementation of the EGDP. The monitoring and evaluation mechanisms should include arrangements for the free, prior, and informed consultation with the affected Indigenous Peoples' communities.

(e) Reporting and documentation

- The proposed screening, social assessment, and consultation process will provide comprehensive baseline data on social, economic and technical aspects of each CDF program. If the social assessment confirms that no ethnic group communities exist in the activities/program areas, no further action is necessary. If the social assessment indicates that there are potential social issues because of ethnic group populations in a program area, it will be ensured that the responsible agencies/entities will prepare specific measures to consult with, and give opportunity for ethnic group populations in participating decision making related to the CDF program, should they so desire. The social assessment process itself is often the method by which such consultations are undertaken however they can be undertaken as a separate exercise.

(f) Responsibility and monitoring

- The CDF planner is responsible for the consultation process. All the CDF program information provided to ethnic groups should be in a form appropriate to local needs. Local languages must always be used and efforts should be made to include all community members, including women and members of different generations and social groups (e.g. clans and socioeconomic background).
- When seeking “broad community support” for the CDF program, it should be ensured that all relevant social groups of the community have been adequately consulted. When this is the case and the “broad” majority is overall positive about the activities/program, it would be appropriate to conclude that broad community support has been achieved. Consensus building approaches are often the norm, but “broad community support” does not mean that everyone has to agree to a given activity. The agreements or special design features providing the basis for broad community support should be described in the EGDP; any disagreements should also be documented. It is important to keep this in mind during the consultation process, and in some cases it may be more appropriate to consider the needs and priorities of sub-communities rather than those of a whole village.¹⁶ In situations of disagreements or controversy the CDF should seek guidance from the World Bank Team as needed.
- If the program has potential to create adverse impact to ethnic groups and/or there are concerns expressed regarding the proposed program, the CDF will ensure that free, prior and informed consultations are undertaken, in a language spoken by, and location convenient for, potentially affected ethnic groups. The views of ethnic groups are to be taken into account during preparation and implementation of the activities, while respecting their current practices, beliefs and cultural preferences.

H. Implementation Arrangement and Monitoring

(i) Responsibility and budget

20. The ESSAD will be implemented by the agencies responsible for the activities under Components 1, 2, and 3 and monitored by PSO. Under Component 1, DPO will ensure that basic knowledge on

¹⁶ There may also be non-indigenous neighborhoods or communities affected by the project. In such cases, all vulnerable people may be included in the consultation process and development of project design based on the requirements of OP 4.10 and the interests of the various social groups affected. It is important, though, to ensure that any customary rights or other entitlements or claims of particular social groups such as Indigenous Peoples are identified.

environmental and social safeguard is integrated into the technical training courses for hydropower and mining. Under Component 2, DEB in coordination with DEM, DEPP, and DESIA will ensure that the safeguard monitoring is conducted as part of the CA monitoring activities while monitoring the implementation of PSHD will be carried out under the leadership of DEPP. Under Component 3, DOM is responsible for ensuring that safeguard consideration is incorporated in all aspects of safeguard planning and monitoring of mining activities. PSO will be responsible for monitoring and evaluation and report the result in the project progress reports while WB team will be responsible for providing guidance. Box 1 shows institutional arrangement for AF. Table 2 provides an estimated cost for the AF activities that is related to safeguard however it is difficult to estimate the cost for most activities.

(ii) Monitoring and reporting

21. PSO is responsible for monitoring and reporting of ESSAD implementation through the M&E system and the project implementation progress report which will be submitted to WB every six months.

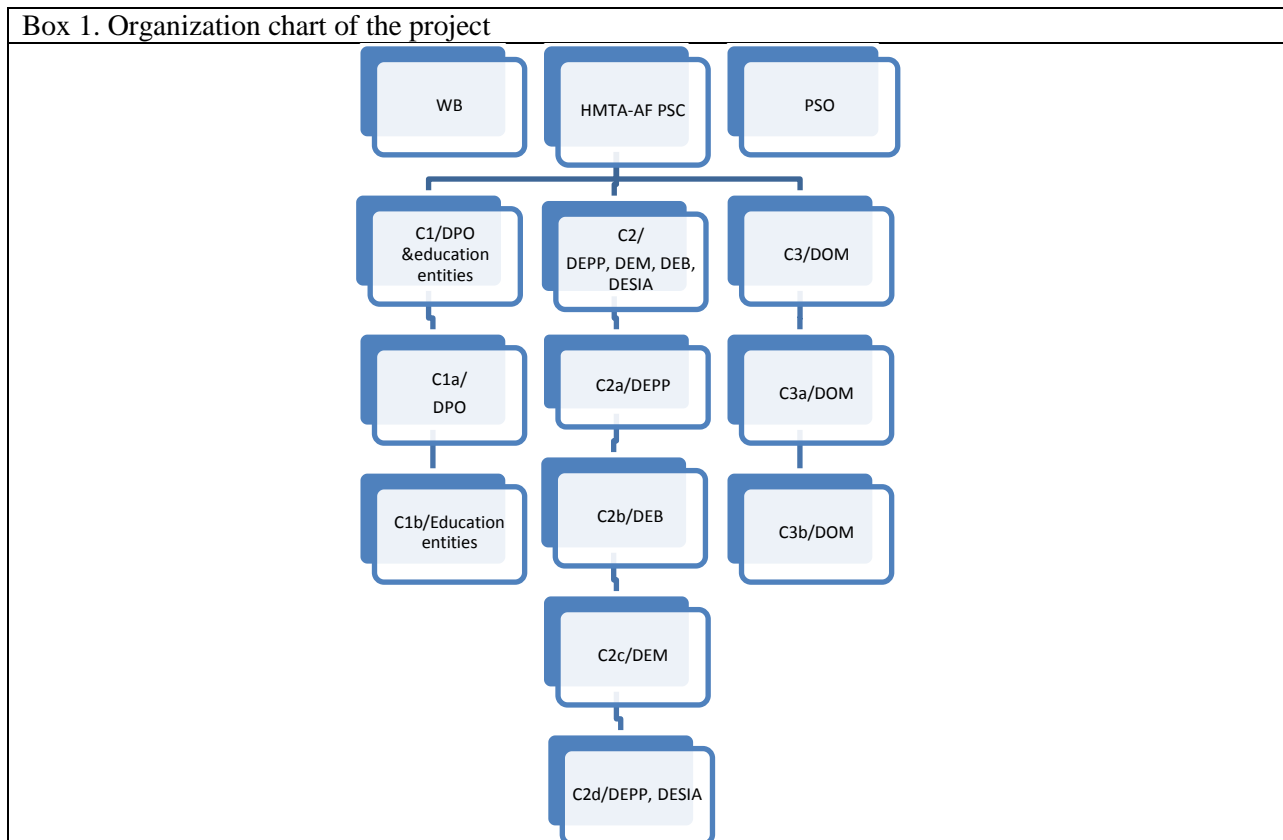


Table 2 Estimated budget for safeguard related activities

Component/Safeguard Related Activities	Estimated cost (\$)	Remarks (% for safeguard)
C1 Joint learning program	3,000,000	
C1a Training courses	1,800,000	About 10%
C2 Hydropower sector	7,000,000	
<i>C2a Hydropower policy and planning</i>	1,900,000	
C2a2 Development of fiscal regime for hydropower	500,000	To facilitate fund flow
<i>C2b Hydropower concession management</i>	3,150,000	
C2b1 Monitoring of CA compliance including safeguards	2,130,000	About 20%
<i>C2c Hydropower management</i>	560,000	
C2c1 TA for update regulations	150,000	About 30%
<i>C2d Implementation and capacity building of PSHD</i>	900,000	About 30%
C2d1 PSHD implementation – development of guidelines	300,000	About 30%
C2d2 M&E on PSHD implementation and Compliance monitoring of safeguards	600,000	About 100%
C3 Mining sector	6,000,000	
<i>C3a Improvement of sector governance and enabling environment</i>	1,700,000	About 30%
C3a2 Development of fiscal mechanism for hydropower	600,000	To facilitate fund flow
C3a3 Development of Community Development Fund	150,000	100% for benefit sharing
C3a5 Preparation of SESA for mining	250,000	100%
<i>C3b Strengthening of government oversight capacity and cadastre management</i>	3,800,000	
C3b1 Inspection and project evaluation	1,100,000	50% safeguards
C4 Project management and monitoring	1,800,000	
C4 Project management including supervision, monitoring, and evaluation of safeguard performance	1,100,000	10% for safeguards