

**LAO PEOPLE'S DEMOCRATIC REPUBLIC
NAM THEUN 2 MULTIPURPOSE PROJECT**



**TWENTY-FOURTH REPORT OF THE
INTERNATIONAL ENVIRONMENTAL AND SOCIAL
PANEL OF EXPERTS**

23 October 2015

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Cover photo: POE in conference on future plans with GOL agencies, NTPC, IFIs, the LTA and consultants.

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ACRONYMS

| | |
|-----------------|--|
| ADB | Asian Development Bank |
| CA | Concession Agreement |
| CLT | Community Land Titles |
| CLWP | Community Living Well Program |
| DAFO | District Agriculture and Forestry Office |
| DEB | Department of Energy Business |
| DRDPEO | District Rural Development and Poverty Elimination Office |
| DWG | District Working Group |
| GOL | Government of Lao PDR |
| GRS | Gender Resettlement Strategy |
| HFMCs | Hamlet Forest Management Committees |
| IFIs | International Financial Institutions |
| IMA | Independent Monitoring Agency |
| LMCs | Land Management Committees |
| LOM | List of Measures |
| LSMS | Living Standards Measurement Study |
| MTDP | Medium Term Development Plan |
| NNT-NBCA | Nakai Nam Theun National Biodiversity Conservation Area |
| NRO | Nakai Resettlement Office |
| NT2 | Nam Theun 2 |
| NTFPs | Non-Timber Forest Products |
| NTPC | Nam Theun 2 Power Company Ltd |
| PLUP | Participatory Land Use Planning |
| POE | International Panel of Environmental and Social Experts |
| POFM | Participatory Agroforestry On-farm Monitoring |
| QSEM | Quarterly Socio-Economic Survey |
| RFA | Reservoir Fishery Association |
| RIP | Resettlement Implementation Period |
| RMU | Resettlement Management Unit |
| SDP | Social Development Plan |
| SERF | Social and Environmental Remediation Fund |
| TAs | Technical Assistants |
| UXO | Unexploded Ordnance |
| VDCs | Village Development Committees |
| VDF | Village Development Fund |
| VFDC | Village Forestry Development Corporation |
| VFG | Village Fishing Group |
| VIT | Village Income Targets |
| WMPA | Watershed Management Protection Authority |
| WUA | Water User Association |

RECOMMENDATIONS

Recommendations which the POE intends to be binding in terms of the Concession Agreement are indicated as “[Binding]”. (See Section 1.1).

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The POE recommends that:

- 1/24 The GOL and NTPC continue to survey resettler household incomes on at least an annual basis employing QSEM methodology and with another survey on full LSMS methodology in 2017. [Binding] 6
- 2/24 Surveys be supplemented by a mix of quantitative and qualitative inquiry into income sources at household and village levels, particularly identifying factors such as location, ethnicity and generational status that may affect both sources and levels of income. [Binding]..... 6
- 3/24 The GOL and NTPC work with Village Development Committees to discuss and respond to the development gaps indicated by these surveys..... 6
- 4/24 Early consideration be given to providing for an annual external audit of the allocation and use of SERF funds. 8
- 5/24 Given the high rate of natural increase, the Nakai health service put more emphasis on family planning, and especially on raising annually the current contraceptive use rate..... 13
- 6/24 Priority be given to resolving existing land conflicts identified by Lestrelin and the POE during its latest mission before further allocation of additional land with a view to resolving the more serious conflicts no later than the first quarter of 2016. [Binding] 17
- 7/24 NRO, RMU and District staff start working with and training Land Management Committees during the fourth quarter of 2015. [Binding] 17
- 8/24 The newly established District and Village Land Management Committees prohibit further inward migration except in special individual cases before RIP is ended, as required under the CA..... 17
- 9/24 NRO, RMU and District staff pay special attention to the situation in Phonpanpek and in other hamlets with recent but pre-resettlement immigrant households such as in Nam Nian, Nong Boua Kham and New Sop Hia which may be attracting new post resettlement, and hence unqualified, immigrant households..... 17
- 10/24 Lestrelin’s additional proposals for strengthening LMCs as functional and legitimate local organizations and for setting up a monitoring and information-sharing institution on CLT area management be implemented without delay..... 17
- 11/24 NRO upgrade and intensify the institutional development and training of each hamlet’s VFG by the end of 2016 while GOL simultaneously provides the necessary policing and legal support for enforcing the fishing and trading rules...
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| 12/24 | The GOL change boundaries and rules so as to allow the Thalang peninsula resettler villagers reasonable and legal access for fishing in the area downstream from the Thalang Bridge. [Binding] | 20 |
| 13/24 | Until boundary changes occur, change rules so as to allow Thalang peninsula resettlers to fish the waters between the downstream Nam Theun channel on the East, the entrance to the Nam Malou waters, and the downstream reservoir area adjacent to the Nam Malou land subsequently included within the resettlement zone. [Binding] | 20 |
| 14/24 | Biological/ecological studies of the reservoir be broadened to determine which parts of the reservoir and which seasons need to be closed to fishing and other foraging activities to protect areas and/or times that are biologically important for reproduction of fish and maintenance of other natural resources... | 21 |
| 15/24 | NRO extend the program of fish processing for women from three villages to all hamlets which express an active interest in this program. [Binding] | 21 |
| 16/24 | The GOL, at a high level, review the present state of the NT2 forestry sector and restate the commitment of Ministers to a renewed effort by all stakeholders to meet the requirements of the Concession Agreement in this vital sector, to countering illegal activities such as unlawful logging on hamlet forest lands and to renegotiating a more equitable basis for sharing NT2 forest revenues between the GOL and the resettlers. | 24 |
| 17/24 | The necessary steps be taken by the Nakai District Governor, through a participatory process, to reactivate Hamlet Forest Management Committees in the 16 hamlets as envisaged in the Concession Agreement, their initial functions being to take an active part in the forest inventory exercise in their forest areas, set up systematic patrolling of the forests, help plan and implement silvicultural programs and oversee the collection of NTFPs. [Binding] | 25 |
| 18/24 | In the second phase of the forestry rehabilitation program, beginning in 2018, there should be a gradual devolution of further roles as appropriate to the HFMCs in such activities as planting, reforestation, logging, extraction, processing and manufacturing. Employment generation for villagers will be a key objective. | 25 |
| 19/24 | The NTPC, with the GOL’s authority, initiate the forestry sector’s rehabilitation by providing a suitably qualified and carefully selected manager on its Nakai-based staff to help set up and begin training the HFMCs in each hamlet in their initial tasks and to coordinate the work of the externally funded technical assistance team whether working in the hamlets or with the VFDC. [Binding] | 26 |
| 20/24 | The GOL formally seek technical assistance for the first phase of the rehabilitation from the IFIs as outlined, including short or longer term specialists as appropriate in the areas of forest inventoring, sawmill operation, forest management planning, marketing and financial management. [Binding] | 26 |
| 21/24 | A forest inventory be formulated as soon as feasible, with technical assistance and advice as specified provided by the IFIs (or NTPC, as agreed between the parties) and again through a consultative process involving the | |

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| villagers, for each hamlet’s forests and a consolidated version for the forest estate as a whole. [Binding] | 26 |
| 22/24 A similar participatory process be followed in formulating an overall Forest Management Plan with technical assistance from the forest management planner, species and marketing specialist (who needs expertise in NTFPs and their domestication as well as in timber species) and a community forest management specialist. [Binding] | 26 |
| 23/24 The Provincial Governor and the Nakai District Governor consult with the resettlers on whether the existing VFDC Board might usefully be converted into a Plateau-wide Communal Forestry Management Board made up of HFMC nominees, the VFDC manager and the recommended NTPC Forestry Manager, to discuss matters of common interest, settle conflicts and make decisions on matters of collective importance such as approving a consolidated Nakai Forestry Plan and managing collective assets. Such a reconstituted Board, if agreed upon, would also inherit the functions of the existing Board. A new Decree would presumably be required to authorize the setting up of the new Board. | 27 |
| 24/24 GOL Ministers review the inappropriately high level of taxes, fees and levies imposed on the village forestry program and impose a lesser and fairer burden on the resettlers by either setting a cap on total taxes, levies and fees, establishing a limited tax exemption, or agreeing on tax relief or a lower tax rate. | 29 |
| 25/24 NRO and DAFO concentrate on achieving their target of 65% of irrigable land having systems in place and operating for the 2016/2017 dry season, while aiming for the CA target of having all households with access to irrigated land by the end of 2017. [Binding]..... | 33 |
| 26/24 The Irrigation Task Force ensure the presence of functional water user associations for each operational irrigation system. [Binding] | 33 |
| 27/24 During the 2015-16 dry season and following the harvest, two monitoring studies be completed in each hamlet on functioning irrigation systems, water user associations, crops grown and yields. [Binding] | 33 |
| 28/24 RMU staffing and budget play a major role in ensuring, with DAFO and the NRO, that these irrigation objectives are achieved. [Binding] | 33 |
| 29/24 GOL reach a decision no later than the end of 2015 on whether the old Army base land downstream from Thalang could be used for agricultural purposes by natural growth households in Thalang and Sop Phene. [Binding] . | 34 |
| 30/24 Proposals to solve the arable land issue pay special attention to encouraging and training natural growth households to become leaders in the agricultural sector inter alia by using unutilized but repairable NRO irrigation systems. [Binding]..... | 34 |
| 31/24 At least one such system per hamlet be operating by carefully selected natural growth households for use during the 2015-2016 dry season. [Binding] | 34 |
| 32/24 In the meantime, natural growth households be surveyed to identify, recruit and begin training appropriate irrigation candidates no later than the fourth quarter of 2015. | 34 |

33/24 Candidates for irrigation training be both women and men since the former are apt to be the principal farmers on smaller irrigated plots. [Binding]34

34/24 The provincial officials involved in promoting cassava cultivation, DAFO in Nakai District, and NTPC meet before early in the fourth quarter of 2015 not just to establish a general cassava policy but also, with the resettler growers, to agree upon an environmentally and economically acceptable system of cultivation. [Binding] 35

35/24 NRO and DAFO investigate the extent to which women who are active in agricultural activities in each hamlet would be interested in a program breeding pigs, as one example, as a cash crop for meeting the rising demand for pork in Laos and in China especially..... 36

36/24 NRO and DAFO utilize one of the three agricultural research stations for small stock breeding and extension purposes for women. [Binding]..... 36

37/24 As part of the CA required Livestock Improvement Program (CA 9.7), a coordinated program of training in achieving enhanced soil fertility and plant nutrition and well supported field work and husbandry improvements be undertaken as part of a sustained effort to lift large animal production to a higher income-earning level over the years ahead. [Binding] 39

38/24 NRO help bring together the various players – local and international NGOs, Tourism Ministry, the ADB specialists, District authorities, VDCs and the private sector – and work more proactively with the ADB and others to explore local interest in tourism development, encourage preparation of a tourism development plan and set up village-level training programs in concert with the ADB. Proposals for tourism training and ventures in the resettlement villages may well emerge from the “bottom up” development approach now being fostered by NTPC. [Binding] 41

39/24 Resettler control of islands within their hamlet boundaries including use for tourism ventures be clarified by an Order from the Prime Minister’s Office. 41

40/24 As emphasized by IFI comments on this report, “off-farm training should be closely linked to the village development planning process, taking into account the local and national labor market opportunities and capacities of resettlers.” 43

41/24 NTPC not only continues to sponsor and fund vocational training under the Off-Farm Pillar, but that additional training be based on a further analysis of needs and opportunities at the village level and on the relationship between past training, income generation and skills use with special emphasis on upskilling female and male resettler youth. [Binding] 43

42/24 Such training include a substantial program of less formal training, being designed specifically to meet real and immediate needs for upskilling among the resettlers, relevant to and reflecting the opportunities available to them, conducted wherever feasible in the villages themselves and including small loans or grants where required to enable the villagers to equip themselves initially to set up business (treadle sewing machines, weaving looms, sets of motorcycle/outboard motor/vehicle repair tools, lifejackets for boats etc.). 43

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| 43/24 | NTPC accept that a more dynamic approach to off-farm activity training in general is called for in the year or two immediately ahead and to this end set themselves an ambitious target of recruiting for training during the remainder of 2015 to be increased proportionately during 2016 and again during 2017. [Binding] | 43 |
| 44/24 | The Resettlement Implementation Period be extended for two years to December 2017 and, as the CA requires, activities performed in the intervening period be reviewed and reassessed by the POE before the expiry of that period to determine whether the Resettlement Objectives and Resettlement Provisions have been achieved in accordance with the Concession Agreement. [Binding] | 46 |
| 45/24 | In accordance with the analysis and recommendation in this report relating to the CA Objectives and Provisions, the further reviews proposed in 2017 include a QSEM/LSMS survey reporting by May 2017, an IMA compliance report available by the end of June, an LTA visit in July and an IFI mission in September, preferably overlapping with a POE mission in early October. A decision on the closure issue would follow in November/December 2017. | 47 |
| 46/24 | There be established a self-governing VDF Network Support Organisation with professional field staff, external support and audit. | 51 |
| 47/24 | In principle, further efforts be made to ensure that the VDF is accessible to all resettlers subject to there being genuine demand for credit based upon opportunities and appetite for further investment. | 51 |
| 48/24 | Henceforth ethnicity be a priority, proportionate to the numerical representation of ethnic minorities (including natural growth households) in villages and hamlets, in selecting resettlers for training in important committees such as the VDC and Land Management Committees, in institutions such as Village Fishery Groups, in irrigation system membership, in activities under the Off-Farm Pillar, and in receiving educational scholarships. [Binding] | 53 |
| 49/24 | NTPC recruit an appropriately trained and experienced Lao-speaking expert to commence surveying, no later than the end of 2015, the current livelihoods, expectations and problems (including alcohol and drug abuse) of newly married natural growth ethnic minority households in Sop Phene, Sop Ma, Nong Boua, and Phonsavang in order to use the information gained to plan and implement their training for committees, institutions, livelihood pillars and receipt of scholarships as mentioned under the previous recommendation. [Binding] | 53 |
| 50/24 | The NRO monitoring unit design a more appropriate monitoring system for tracking the welfare of ethnic minority households from the four sample hamlets. | 53 |
| 51/24 | The right of the Ahoe to continue to live at Old Sop Hia be reaffirmed and Ahoe households surveyed as to their current preference for place of permanent residence. [Binding] | 56 |
| 52/24 | Should the site of Old Sop Hia continue to be the Ahoe's preference, all Ahoe resettled households who so desire be allowed to return to the current Old Sop Hia site with a WMPA office established there. [Binding] | 56 |
| 53/24 | GOL's Social & Welfare Department with the assistance of NRO and RMU, develop by the end of the first quarter in 2016 a more expansive definition | |

of vulnerable households and monitor high risk ethnic minority and lagging households that meet current agreed upon criteria of assistance in cash and/or kind (including possible hamlet kinship support). 57

54/24 Special attention be given to natural growth households and to the poorer hamlets on the assumption that they may include a greater proportion of vulnerable households. [Binding]..... 58

55/24 Support for women from outside organisations like the Lao Women’s Front focus on preparing them for positions of leadership in the hamlets and villages.60

56/24 As discussed elsewhere in this report, livelihood programs pay special attention to the specific income needs, wishes and talents of women. 60

57/24 GOL make available substantial additional funds for implementing the government’s management, capacity building and wider support requirements during the NT2 Handing Over Process. [Binding] 64

58/24 NTPC and the IFIs maintain their support roles in helping strengthen the ability of the villagers to manage their own affairs. [Binding] 64

59/24 The RMU be reconstituted as a functional organization with the necessary staff and budget to carry out during the remainder of the RIP, and during the Handing Over process, the most important functions listed under Article 6.1. [Binding] 65

60/24 Full time staff include, in addition to irrigation specialists, specialists who can work with improving District and Village Land Management Committees, and such additional staff as recommended during RMU meetings with the Nakai District Governor and the NTPC E and S manager. 65

61/24 The RMU’s functions continue throughout the Handing Over Process at the end of which the RMU will be disbanded. 65

62/24 NTPC pay special attention in the future to developing conditions of service, such as contracts extending to the end of an extended RIP and bonuses for completing such contracts, that will help in reducing the problem of staff turnover. 65

63/24 NTPC provide sufficient budget, trained extension staff and consultancy services to ensure that resettler productivity and use of available land and water resources can continue to increase on an annual basis until and beyond the end of the RIP. [Binding] 65

64/24 The new NT2 Development Fund’s terms of reference and scope generally not be made too inflexible, at least in the initial years of its existence, and that it not be precluded, for example, from funding initially the provision of counterpart workers on the GoL side should that prove necessary. 70

65/24 In implementing the new “bottom-up” approach to stimulating new ventures and initiatives in the villages on the Plateau the NTPC pay special attention to recruiting advisors who are experienced in fostering development in small and remote rural villages, are prepared to live and work in the villages, and understand how to help motivate and build self-reliance among the resettlers..... 71

66/24 At this stage in the evolution of the NT2 project, a review of the level and relevance of all monitoring work on the project be undertaken by stakeholders, covering all agencies involved, including the IFIs, the POE, the LTA and the GoL IMA..... 71

67/24 The application period for the new WMPA director be extended and the position be widely advertised, to try to obtain the most qualified applicants. 74

68/24 The reconstituted WMPA Board of Directors include at least two outside members, preferably from international environmental NGOs in Laos, the university, and/or international organizations active in Laos..... 74

69/24 The Independent Monitoring Agency (IMA) for WMPA be appointed and paid by the Board of Directors, not by the WMPA Secretariat, and be given adequate time and resources on its visits to monitor the WMPA activities thoroughly..... 74

70/24 The WMPA seek to establish an ongoing partnership or other relationship with a qualified international NGO, and establish research partnerships with the National University and appropriate NGOs..... 74

71/24 The WMPA, with Khamkeut DONRE involvement, be authorized to establish a permanently staffed outpost at the Old Sop Hia site, whose duties would include working closely with the resettlers’ Reservoir Fishery Association, Village Fishery Groups, and Nakai District to manage, protect and patrol the reservoir fishery between the dam and the upper Nam On and to patrol the adjacent terrestrial portion and islands of the Corridor. [Binding]..... 74

1 INTRODUCTION

1.1 The POE mission and its purpose

This is the Twenty-Fourth Report of the International Panel of Environmental and Social Experts for the Nam Theun 2 (NT2) Multipurpose Project in Lao PDR (POE). The Panel is a Standing Body for the period covered by the Concession Agreement for the Project. The report covers the POE's visit to Lao PDR in April/May 2015. The members of the Panel are D. K. McDowell (consultant, Otaki, New Zealand), T. Scudder (Professor Emeritus, California Institute of Technology, USA) and L. M. Talbot, (Professor, George Mason University, Virginia, USA). While Dr. Scudder was unable to participate in person in the mission to Laos on this occasion, he was fully informed of the findings of the field team and was actively involved in the writing of this report. The team was joined for the mission by R. G. Laking (consultant, Wellington, New Zealand) in an advisory capacity.

This mission was not the usual monitoring and advisory exercise. It had a special purpose. This was to meet the legal requirement in the Concession Agreement¹ (CA) that at least six months before the expiry of the intended Resettlement Implementation Period (RIP) the POE review activities performed during the RIP, analyze whether the Resettlement Objectives and Provisions spelled out in the CA have been achieved in accordance with the CA, and make a recommendation to the GOL accordingly on whether the RIP should be ended in December 2015 or extended for a designated period.

Should an extension be recommended, then the GOL may require that POE recommendations designed to achieve the Objectives and Provisions be implemented at the Company's cost. (See CA Sched.4, Part 1, para.2.4 (b), reproduced in Annex II appended.) The CA (para. 30.7(a)(iii)) makes it clear that this requirement is not a Limited by Cost Environmental and Social Objective.

It should be noted that the CA gives the POE both an implicit and an explicit role in interpreting the Resettlement Objectives of the CA (viz. Section 30.4(b) (i) of the CA).

The Objectives are extensive, ranging from a requirement on all parties to provide for the construction of designated infrastructure across the Resettlement Area, to ensuring that the Resettlers have their income earning capacity enhanced and their livelihoods "materially improved...on a sustainable basis", and to the application of special measures towards ethnic minorities and vulnerable persons - inter alia to improve their socio-economic status. Special consideration is also to be given to gender and natural growth households.

The Resettlement Provisions are similarly extensive, spelling out, for example, who is eligible for Resettler entitlements, the Company's responsibility for providing prompt and adequate compensation for lost assets or livelihoods, and the responsibility of all parties to protect the social and cultural cohesion of villages. Relevant excerpts from the CA are set out in Annex II attached.

The CA sets a Village Income Target (VIT) for the resettler villages, to be reached by the end of the RIP. As well as reporting on all the other CA requirements discussed below, the POE is mandated specifically to consider whether it is necessary to extend the RIP to achieve the VIT. We discuss the VIT in Section 2.1. It should be noted that a decision on extension rests with the GOL, but this is subject to the qualification set out below. The POE

¹ Made between the Government of Lao PDR (GOL) ("Government" in the Agreement) and the Nam Theun 2 Power Company Ltd (NTPC) ("Company" in the Agreement).

makes a recommendation to the Resettlement Committee on extension (or otherwise) and the decision is then the responsibility of the Government. The written concurrences of the IFIs (International Financial Institutions: World Bank and the Asian Development Bank (ADB)) are required, however, for a GOL decision against extension to be made.

1.2 Panel activities

To be in a position to make well-informed decisions on the range of issues before it, the POE spent time in both Vientiane and the field, devoting the best part of four productive days in the resettlement villages discussing plans, problems, and prospects with the Village Development Committees, Village Fisheries Groups and resettlers in the streets and fields. We visited twelve of the sixteen hamlets for this ground-truthing exercise and held extensive talks also with NTPC staff, with the District authorities and agencies which will in due course take over management of the various livelihood and community development activities, and with both Company and District technical people. We held helpful discussions with Nakai District Governor Somphong Phayvanhthong and the Khammouane Provincial Governor Khambay Damlath, and briefed Minister of Mines and Energy Soulivong Daravong and Deputy Prime Ministers Asang Laoly and Somsavat Lengsavad on our conclusions and recommendations. We are most grateful to them all for their advice and views, freely shared. We also spent two days with a highly representative group of project stakeholders exchanging views on the planning document on the way forward entitled the Road Map. This promising initiative on the part of NTPC management grew out of a List of Measures initially drafted by the POE in a largely successful endeavor to help create a consensus among the stakeholders on the way forward.

Since returning from Lao PDR, we have reviewed and analysed several major reports and documents which we received while on mission and which have materially assisted us in reaching our conclusions. We have also had further exchanges with the GOL, NTPC and the IFIs on our findings and on draft reports circulated in July and September. All these documents and exchanges have helped us complete our final report.

1.3 Extension of the Resettlement Implementation Period

The POE has over the years acknowledged the efforts made by the stakeholders to achieve the objectives and provisions for the project set out in the Concession Agreement. The latter is itself an innovatory document which details for the first time a program of compensation and development for the people downstream of a large dam as well as covering the needs of the resettlers, initiates a health program for all project affected people which has proved highly effective, creates a valuable precedent in setting aside long-term funding for a protected area - the NT2 catchment - as an offset for the loss of land and biodiversity to inundation and resettlement requirements, and establishes an ongoing contribution to the costs of maintaining the impressive project infrastructure well into the future. This is all worthy of renewed recognition and appreciation here.

At the same time it has to be said that management of many of the developmental and human elements of the project has been less assured. The reasoning behind this conclusion is set out in detail below. In essence the reality is that fostering the development process in a context like that found on the Nakai plateau is a time-consuming and demanding task which cannot be achieved within a restricted timeframe. **The POE's finding is that a substantial proportion of the Resettlement Objectives and Provisions has not been fully achieved as yet and hence the Panel recommends a two year extension of the RIP to the end of 2017.**

1.4 New management initiatives by NTPC

The POE argues in the body of the report below that fostering development in an area like the Nakai Plateau is difficult, relatively costly and above all requires time. To do this in partnership with a wide range of ethnic minorities, some of whom are not far removed from hunter/gatherer and swidden cultivation cultures, compounds the problem. To their credit, the new management in NTPC has recognized this and accepts at least implicitly that there remains much to be done before sustainability of the livelihoods can be adjudged a reality. Indeed, they have started putting together a Medium Term Development Plan (MTDP) to address what remains to be done and are to engage with other stakeholders in widening its scope and trying to define the outcomes sought in the medium and long term, not least enhanced sustainability. That is a significant step forward.

In the view of the POE the MTDP process offers a convenient, timely and inclusive opportunity to address the inadequacies remaining, notably in livelihood development. The two year plus period to the end of 2017 is a timeframe which will enable much to be accomplished in terms of achieving the remaining Resettlement Objectives and Provisions so long as the process is well managed, well-resourced by the GOL, the NTPC and the IFIs and is pursued with vigor. The POE is firmly of the view that the early engagement of the GOL and its agencies at the District level and representation of the IFIs and the Village Development Committees (VDCs) in a substantive way in the process are important next steps in generating buy-in for the MTDP process and its planned outcomes.

Furthermore, the NTPC shareholders have now offered to substantially expand the resources made available to the project, extending to the end of the Concession Period in 2035. The object is to boost further the development of the resettled villages and at the same time to promote villager initiatives and encourage autonomy. Managed effectively and sensitively this initiative will accelerate the steps toward sustainability. The POE welcomes this as a most worthwhile step forward and applauds the shareholders for making this far-sighted move.

1.5 Status of recommendations in this report

Because of the special role that this report plays, and the potential binding nature of the POE's advice relating to the Objectives and Provisions, we have made it as clear as possible when we intend our comments and recommendations to have this force. In particular, we have highlighted those recommendations which, subject to the consideration of the GoL and IFIs, would be binding on the Company. Each of them has "Binding" in brackets at the end. Furthermore, Annex I of the Report summarises our analysis and advice on RIP closure for each major topic in the Report: it indicates where we see gaps, what we think are necessary outcomes to demonstrate compliance, and what binding recommendations we have made towards achieving those outcomes.

There are other recommendations which we regard as sound advice, but are not specifically directed at achievement of conditions for closure of RIP. They are nevertheless important and the POE will be actively monitoring and reporting on their implementation.

2 CA TARGETS REACHED

2.1 Income Targets in the CA

2.1.1 Fulfilment of the CA provisions

The CA sets two income targets to be achieved during the RIP:

- Household Income Targets are a minimum income level, related to the Lao national poverty line, to be achieved by every resettler household (CA Schedule 4 Part 1 Clause 1.2 and Clause 3.1(b)); this is one of the Objectives that must be met as a condition of RIP closure;
- Village Income Targets (VIT) are equivalent, for each of the 16 Resettler Hamlets, to an average income per person in the village equal to the average rural income per person in Lao PDR; this is also a condition for RIP closure.

In January 2014, as recorded in POE Report 22, the Resettlement Committee declared that the Resettlement Household Income Target had been achieved "in accordance with the Concession Agreement" (POE 2014a). This decision was based on the report on the Nakai Socio-Economic Survey Round 7 survey of March 2013². That survey found that "not only have 97% of the resettler households achieved the Household Income Target (above the poverty line), but in fact their average consumption levels are nearly 3 times higher than the poverty line." (Fredericks 2013). In our report we did not question this decision but recorded our reservations about the survey information on which it is based. Our principal concern was that information on sources of income reported by households is both limited and unreliable.

We are mandated to rule specifically on achievement of the Village Income Targets, as a condition for closure of the RIP (Schedule 4 Part One Clause 1.2 and Clause 3.4(a)). A special household survey on the more limited methodology of the Nakai Quarterly Socio-Economic Survey (QSEM), conducted in December 2014-January 2015 specifically to determine achievement of the VIT (Bouapao 2015c), concluded that all Resettler Villages and their constituent Hamlets had achieved the Targets. Again, we do not question this result but our concerns are similar: that we don't know enough about income sources and livelihoods to be confident that the estimated income levels are sustainable.

Most of these concerns derive from our analysis of the livelihood pillars discussed later on in this report and of the capacity of the Company, the Government and the Resettlers themselves to provide the necessary support for these livelihoods. These issues are discussed in later sections of the report. What follows here is a more detailed discussion of the Village Income Targets results themselves.

2.1.2 Observations on the survey results

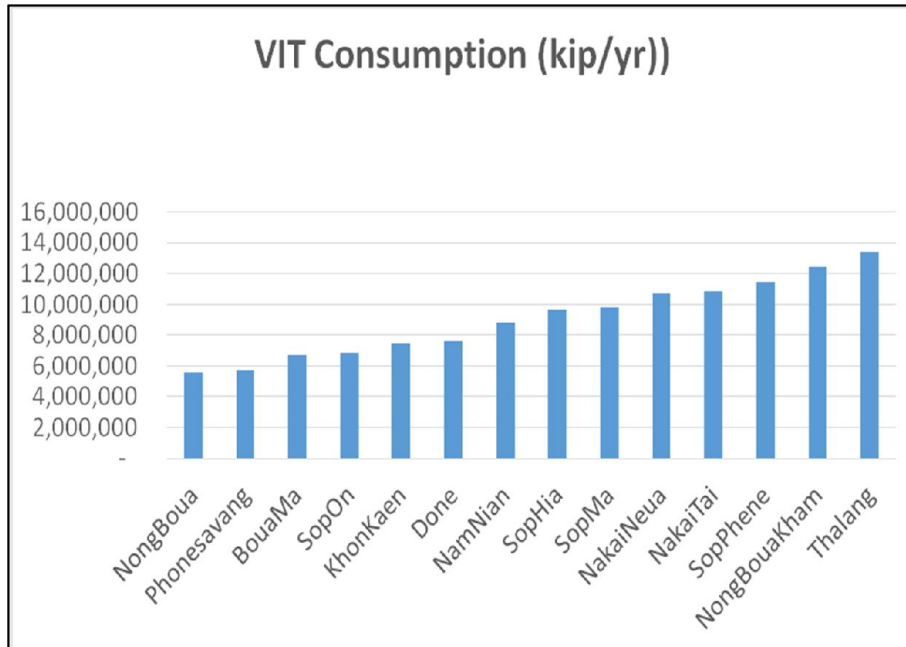
First, the survey is not directly of reported incomes. It used consumption as reported by householders as a proxy for income. This is common practice in developing rural economies because of the evidence that income is usually significantly underreported. As a proxy measure it is valid if change in household net worth (net debt and real and financial savings) is zero or positive over the measurement period. Based on the reported results for debt and savings in LSMS7, QSEM9³ and the VIT surveys, this seems a reasonable first

² A household survey conducted according to the methodology of the World Bank's Living Standards Measurement Study (LSMS).

³ Conducted in third quarter 2014. (NTPC 2014)

approximation. There is some increase in net household debt reported in QSEM10⁴, but probably not enough to affect this overall conclusion.

Second, as the Chart shows, while all villages and hamlets exceeded the targets with reasonable error margins, some achieved much better results than others. The four poorest hamlets, Nong Boua, Phonesavang, Boua Ma and Sop On have about half the per capita income of the four richest, Naka Tai, Sop Phene, Nong Boua Kham and Thalang. Rankings have changed considerably over time for some hamlets, also.



There are two implications from this disparity in performance. One is that further analysis of the sources of variance in incomes within and between hamlets is important, for better targeting of support for livelihoods. Size and location appear important as does ethnicity. A re-analysis of results into those for original resettler and natural growth households also added some useful information about how well the children of the resettlers are faring. But the drivers of economic performance need further study. The Nakai Resettlement Office (NRO) reports that it is giving special attention to individual poor and lagging households; both Company and GOL also need to focus on performance at a hamlet level and work with VDCs on measures for capacity building and strengthening.

Second, we need to know more about incomes. Sustainability of incomes depends on each household having a menu or portfolio of income-generating activities that do not depend on depletion of natural assets and is reasonably robust overall to fluctuations in any of its component activities. We know that some sources of household income are illegal: mainly from illegally acquired hardwood timber or fish. A study in six hamlets, which was based on group workshops in April 2015 (Bouapao 2015a), told us something about the relative importance of different sources of income, including some idea of the importance of poached rosewood in the income of some hamlets. But a more comprehensive survey would have helped understand why there is such a large variance between hamlets and to form a

⁴ Conducted in first quarter 2015. (NTPC 2015b).

judgment as to whether these incomes are sustainable. The cash expenditure information in the QSEM series indicates that consumption was relatively stable over 2012-14 but there was a drop in this statistic in QSEM10 and some increase in household debt. This outcome does not invalidate the VIT results but the volatility in the various measures is enough to suggest that neither consumption nor income have settled down enough to be reasonably predictable from year to year.

2.1.3 Continuation of social and economic monitoring essential

A consequence of this volatility is that regular social and economic monitoring is an important component of assessing progress towards sustainable livelihoods. The List of Measures (LOM) proposed that NTPC step up its capacity to analyse the drivers of poverty and vulnerability based on its monitoring. We recognize that poverty can arise from the complex interaction of many factors, which complicates statistical modelling, but continued efforts to understand these drivers are vital. A program of investigation by qualified social scientists should be part of the monitoring program.

The POE considers that NTPC needs to continue its monitoring with an emphasis not only on consumption and other indicators of well-being but also on sources of income. Further efforts should be made to improve the quality of estimates of income sources, which are important for assessing sustainability. Monitoring reports should be complemented by investigation of the main drivers of consumption and income and the effects of personal, social and institutional factors.

2.1.4 Conclusion

The POE accepts that, on the available evidence, the Village Income Targets were met at the time of the survey, albeit with a wide variance in performance between the hamlets. Because of the paucity of information on how these incomes have been derived, there is however very little evidence on whether these Targets can be sustained in the future and will be robust to changing circumstances on the plateau, Further monitoring and analysis in each of the main livelihood pillars is required to make a judgment on these factors. We discuss these issues in a following section.

The POE recommends that:

- 1/24 The GOL and NTPC continue to survey resettler household incomes on at least an annual basis employing QSEM methodology and with another survey on full LSMS methodology in 2017. [Binding]**
- 2/24 Surveys be supplemented by a mix of quantitative and qualitative inquiry into income sources at household and village levels, particularly identifying factors such as location, ethnicity and generational status that may affect both sources and levels of income. [Binding]**
- 3/24 The GOL and NTPC work with Village Development Committees to discuss and respond to the development gaps indicated by these surveys.**

In the light of their involvement in earlier surveys the POE suggests that the assistance of David Fredericks, Nina Fenton and Lilao Bouapao be sought by the NRO Monitoring Unit in designing and interpreting the appropriate surveys.

2.2 Project Infrastructure

It is not the POE's intention to make any further assessment in this report of the attainment of the multitudinous infrastructure requirements set out in the CA. The Panel has made clear several times that the infrastructure work has been largely completed and to a

generally acceptable level of competence. Historically the POE has queried in some of its earlier reports the roading work done by project sub-contractors and has drawn attention to the often excessive width of tree clearance for roads indulged in by these companies to the detriment of the environment and the topography in general. The Panel has also had to draw deficiencies in the water supply and irrigation systems to the NTPC's attention on several occasions. There are remaining inadequacies on these fronts but the Company is aware of them and is working on them. But the standard of work on resettlement housing and most other buildings, for example, has been generally high and is appreciated by the Resettlers.



**Dam on the Nam Theun, western end of the reservoir
(©NTPC/Stanislas Fradelizi)**

It appears from the recent report of the Independent Monitoring Agency (IMA) that some of the community buildings and amenities built were short on specified requirements. Thus, some primary schools were found to have been built at around 80% only of a specified floor area and health centres at three quarters of the area specifications. NTPC has said in response that the Company was required by the GOL to follow the standard GOL requirements for such buildings and did so. The GOL has confirmed to the POE that the standards are uniform across the whole country. It would seem accordingly that the NTPC had no alternative but to adhere to the Government's wishes in this instance and cannot therefore be held responsible for the apparent failure to meet the CA specifications.

2.3 Use of SERF

In the POE's view, if any remedial action arising from the failure to meet certain infrastructure specifications is required, the costs should not be met from the Social and Environmental Remediation Fund (SERF). This highly innovative and precedent-setting initiative by the NTPC is essential for ongoing maintenance and some operational purposes.

The POE has learned that the SERF management has not agreed (quite correctly in our view) to take responsibility for irrigation systems not functioning because of poor system specification, design or construction, which costs are the responsibility of NTPC. The POE has consistently interpreted the Terms of Reference of this useful Fund, whose full title is the

Social and Environmental Remediation Fund, as emphasising its purpose as a source of finance for maintenance of the NT2 assets and for some operational costs. It should in our view be largely reserved for these purposes and not drained off to fund projects unrelated to them. Pressure on SERF to become a source for any work not otherwise funded will mount, including from the resettlers' own institutions like the VDCs.

The POE will continue to check that SERF funds are not diverted for remedial capital and infrastructural works meant to have been funded from other sources. It seems prudent also to consider a regular annual audit of the allocation and use of SERF funds.

The POE recommends that:

4/24 Early consideration be given to providing for an annual external audit of the allocation and use of SERF funds.

2.4 Schedule 35 Interpretation

The POE notes that some NT2 documents infer that in the Schedule 35 assessment exercise undertaken in 2010 the POE "certificated" (which has been interpreted by some as "completed") a high proportion of CA obligations. This is not accurate. The DEB in fact requested the NTPC at the time to remove the "substantial ambiguities" in the Certificate of Completion by stating clearly that the POE has expressed reservations of one sort or another about fifteen major items and many minor items in the "obligations completed" list and required that these items be moved to the "partially completed" list. To their credit NTPC immediately agreed and its Board Chairman added that the Company was "keenly aware that the Concession Agreement schedule 35 objectives represent a contractual milestone but in no way imply that the Resettlement Objectives have been met". Five years on there remain serious questions about many of the issues raised by the POE in 2010.

3 SUSTAINABILITY PRINCIPLES AND ISSUES

3.1 What is sustainability?

Sustainable livelihoods are a basic objective of the CA, but it contains no adequate definition of sustainability or how it may be measured. We therefore have to look for its commonly accepted meaning. There is extensive discussion of the concept in general terms in development literature which enables the identification of a common core of relevant principles. In addition, one former World Bank NT2 expert, one POE consultant and one POE member have attempted, independently and in broadly similar ways, to define sustainability in ways that have applicability to the large dam Resettlement Implementation Process.

The most widely known and one of the earlier formulations is that of the Brundtland (UN) Commission on Environment and Development, which defines sustainable development as the kind of development that meets the needs of the present without compromising the ability of future generations to meet their own needs. By the early 2000s a common high-level definition was that: "A sustainable livelihood is commonly accepted as comprising: ...the capabilities, assets (including both material and social resources) for a means of living. A livelihood is sustainable when it can cope with and recover from stresses and shocks and maintain or enhance its capabilities and assets both now and in the future, while not undermining the natural resource base."⁵ The development literature also commonly assumes that sustainability focusses on the requirements of poor people and incorporates some notion of equity of access between this and future generations.

The POE consultant was the late Robert Goodland who was the World Bank's leading ecologist and environment expert for 23 years. According to Goodland and the equally eminent Bank economist Herman Daly: "The four types of sustainability – human, social, environmental and economic – are clearest when kept separate. While there is overlap among the four in the goals of economic development, and certainly major linkages, the four are best disaggregated and addressed separately by different disciplines." As for sustainable development, it is assumed by Goodland and Daly to be "development without throughput growth beyond environmental carrying capacity and which is socially sustainable."⁶

The consultant is Peter Rogers, Harvard's Professor of Environmental Engineering. He has been a POE water resources consultant on NT2 and is the senior author of Harvard's 2006 book, *An Introduction to Sustainable Development*. Rogers and his two co-authors wrote, granted the state of the world today, that "...we just cannot keep on expanding and using resources, because something will be exhausted in the end. But in the short run, we can rely on human ingenuity to get us through the next 30 to 50 years. After that all bets are off. Our definition, therefore, of sustainability is time-bound to a couple of human generations. Along with the journal *Science*⁷, we believe this is the most scientifically supportable position to take." Also (from a study of attempts to operationalize sustainability in

⁵ DFID (1999a, 2000d, 2001). Sustainable Livelihoods Guidance Sheets, Numbers 1–5, London: Department for International Development (also available on www.livelihoods.org).

⁶ Draft on "Environmental Sustainability: Essential and Urgent" (2005) for "Journal of Ecological Sustainability." In Press.

⁷ *Science*. 9 August 2002. Vol. 297.No.5583.

agricultural systems): “The majority of methodologies for sustainability assessment of agroecosystems do not go beyond a couple of decades.”⁸

The POE member is Thayer Scudder whose definition of a successful (hence sustainable) resettlement process involves a four stage process “that brings the resettlement process to a successful end as project areas and populations are integrated into the political economy of a region or nation. Three conditions must be met ... The first is a handing over process whereby specialized project agencies hand over assets to resettler institutions and to line ministries.

The next two conditions relate directly to the second generation of resettlers. On the one hand, their living standards must continue to improve at least in line with improvements in neighbouring areas. On the other hand, community members must have the institutional and political strength to compete for their fair share of national resources.”⁹

In effect, this is again a time bound definition of sustainability dealing with two generations only. Pragmatically also two generations is probably a realistic “event horizon”. It avoids the philosophical problem of a more general concept of “care for future generations” since it focuses on what the first generation of resettlers is likely to want for those children born after physical removal; that is the second generation.

3.2 Summary

In summary, longevity, intergenerational justice, resilience and development without growth beyond environmental carrying capacity are key elements of most definitions. But there is no “one fits all” formula so **the common practice in seeking sustainable development is to work towards a coherent aggregation of practical measures incorporating targets, indicators and timelines relevant to particular sectors and circumstances. That is the course being pursued by the POE in the case of the NT2 project. It is the pragmatic way forward.**

In addition to meeting the four key but broadly stated elements above, sustainability measures specific to NT2 after RIP closure include the availability of NTPC and GOL funds as appropriate to cover major resettlement deficiencies, new problems and unexpected events through to the end of the Concession Period, ongoing or new livelihood programs such as reservoir stocking with appropriate indigenous species, the establishment of a multi-hamlet marketing system and product processing facilities, the building up of capacity building programmes at hamlet, village and District levels and the strengthening of institutions at all three levels. Measures such as these should be included in the Company’s Medium Term Development Plan, which we welcome, and discuss further later in this report.

3.3 When will sustainability be achieved?

Livelihoods are sustainable not when decisions are made to do certain things but when it appears – ultimately as a matter of judgement after allowing for all the attendant risks and uncertainties of looking into the future – that they meet the conditions of productive value, non-depletion, intergenerational equity, resilience and longevity.

⁸ Becker, B. 1997. “Sustainability Assessment: A Review of Values, Concepts, and Methodological Approaches”, World Bank: Consultative Group on International Agricultural Research.

⁹ Scudder, Thayer, 2010. The Future of Large Dams: Dealing with Social, Environmental, Institutional and Political Costs. London: Earthscan.

Sustainability of livelihoods on the Plateau will be achieved when the natural resources of the plateau are being replenished and its built assets are maintained to support the living standards of the people who draw upon them and the law and governance institutions enable them to protect their property rights and resolve disputes. This requires evidence that natural resources such as soil, forests and fish, are not being depleted by human activity; that the built assets necessary for livelihoods are being properly maintained; that the formal and customary institutions are protecting the commons and giving fair access to them; and that estimates of future population growth do not indicate a growing unmanaged risk in the immediate future.

Sustainability is also to be found when District, village and hamlet organizations are protecting the personal and community property of villagers, enabling them to decide collectively on village development priorities, providing them with the knowledge and help they need to develop their own livelihood activities, and helping them resolve their disputes.

So we would look for evidence that villagers are not suffering significant losses to personal and community property, that they participate in village decision-making and believe that the choices made are the best ones for themselves and their village, that they value the learning they get from technical assistance and apply it in practice, and that they believe that their disputes are being fairly resolved. We would expect every village household to have a portfolio of income-generating activities that do not depend on depletion of natural assets and is reasonably robust overall to fluctuations in any of its component activities. And we would seek evidence that household incomes do not depend on illegal or resource-depleting activities or are exposed to significant and unmanageable risks of production or marketing.

3.4 GOL and NTPC views

We should comment here specifically on views expressed by the GOL and NTPC on the definition of “sustainability”.

In the context of the CA, the GoL and NTPC have argued that it can be defined as the achievement of the Household and Village Income Targets, provided there is an additional agreement, made outside the CA, for the company to continue funding development projects and institutions.

We note that the GoL have since said that they are still in discussion with NTPC on the definition. It seems quite clear to us, however, that, on any reasonable definition of sustainability current at the time the CA was being drafted, it cannot be limited to achievement of target incomes at a specific point in time. The definition should incorporate the additional qualities of generation of productive value, non-depletion of natural resources, equity between at least the first two generations, and resilience to likely stresses and shocks over some reasonable period of time in the future.

As to the side agreement between the GOL and NTPC on continued funding: the company’s proposals are a welcome additional support for development, but the POE would make the following comments:

- We cannot see that a side agreement to the CA, made without explicitly amending the CA, can legally constitute a fulfilment of the terms of the CA;
- As the minute of agreement acknowledges, the parties are also taking comfort for their view of sustainability from a number of possible commitments – by GOL, NTPC and the IFIs – which are so far by no means concrete and confirmed.

In addition, responding to our draft, NTPC have criticized what they believe to be our view on sustainability and have made some related comments on participatory development. We believe that these comments are largely based on a misconception of our argument. Nevertheless the comments raise some important questions about both issues and deserve a direct response, which we have set out in Annex III of this report.

4 POPULATION AND NATURAL RESOURCES

4.1 Population pressures on land

Pressures on land on the plateau will most likely increase in the next 5-10 years as the population continues to rise. The main issues have always been how to make better use of a diminished amount of land for agriculture and livestock as well as finding living space for a rapidly growing population. The NTPC census of all households on the Plateau (NTPC 2015c) shows a 66% growth in total population from 2003-2014, an annualized rate of 4.7% p.a. which, as the POE has pointed out in earlier reports, is well above the national average. Most of this is due to natural increase although some is the result of new people, some of them related to the resettlers, moving into the District. There is no sign of significant outward migration – quite the opposite. As proposed in earlier reports, the POE is of the view that further efforts aimed at family planning are called for.

The POE recommends that:

- 5/24 Given the high rate of natural increase, the Nakai health service put more emphasis on family planning, and especially on raising annually the current contraceptive use rate.**

The population growth has resulted in an increase in the housing stock. From 2008, when NTPC's rehousing program was completed, new dwellings (all non-NTPC) grew by 388, or more than a third. Of these, 328 were occupied by natural growth households - CA 3.2 (a)(i). The age pyramid of the current population suggests that the natural rate of increase will slow somewhat in the next decade but without allowing for migration may contribute a further third or more to total population. Many of these young men and women will also be seeking to form new households in the coming 5-10 years.

People will respond to these pressures in different ways. They will build more new houses on whatever land is made available to them. More of them may be able to support themselves by more intensive and productive use of the available land. Ultimately, some may simply leave the plateau in search of better opportunities elsewhere. At some future stage, the children of Nakai, as in many other rural communities, may simply leave and likely move by stages down towards the Mekong, where they hope to find other employment and send money back home to support their relations. The probability, however, is that a majority of the ethnic minorities in up to seven hamlets on the Nakai Plateau will not be able to find sustainable employment off the Plateau.

4.2 Adequacy of arable land

The growth in population and emerging conflicts over arable land (discussed further below) raise the fundamental question of whether there is enough land available for all resettlers on the Plateau.

Prior to their resettlement, resettler households in the 16 hamlets were supported by diversified production systems based on agriculture, livestock management, fishing and various aquatic products, and collection of non-timber forest products of which some were the major source of income for women as were buffalo for men (though primarily sold in emergency situations). The importance of the various components tended not only to vary seasonally but also from year to year depending on climatic conditions, labor resources, and discussion among household and village members.

Such a diversified household and hamlet production system is just as important to ensure sustainability now and in the future. That fact (a fact based on the analysis of other production systems in the mountainous areas of Southeast Asia) has tended to have been

neglected as more emphasis has been placed on specific pillars as opposed to the linkages between them that vary through time as well as various cross-cutting issues such as ethnicity, gender, hamlet institutional capacities, and the differing needs and value systems.

In a diversified production system, the land must be adequately fenced as required by the CA to keep out domesticated animals, women would benefit from tending small livestock (pigs being the logical animal as women were responsible for them pre-settlement), there would be crop sales from irrigated agriculture, and so on. A minimum of 0.16 ha would need to be irrigated per household with sufficient water, natural growth and natural growth households would be targeted for participating in irrigated agriculture and other agricultural/horticultural activities, more gully dams per hamlet would be built, drawdown areas and islands utilized, and productivity gradually intensified and increased on an annual basis.

The distribution and adequacy of land varies between households and between hamlets. At meetings in Sop On and in Khon Kaen, the POE was told that land availability, though of poor quality, was sufficient. On the other hand, there are land disputes between Phonsavang and Bouama, between Phonpanpek and Nong Boua and between Sop Hia and Nong Boua Kham. The Sop Hia/Nong Boua Kham and Phonpanpek/Nong Boua situations are especially serious and point up the extent to which hamlets vary in size, histories, resources and influence. Phonpanpek, for example, was a BPKP resettled village in the 1990s on the outskirts of Oudomsouk; hence with the advantage of not only being the closest hamlet to the district headquarters, market, hospital, and first secondary school but also the first to be resettled.

4.3 Findings

The POE's view has consistently been that there is sufficient land and other resources available to attain an acceptable level of livelihood sustainability for the NT2 resettlers provided agriculture and livestock management are intensified as the CA requires and as the Social Development Plan specifies.

The POE remains of this view. Current available agricultural land per household is 0.88 ha (most natural growth households do not yet have this area allocated to them – see comments below on this situation). There are 3,641 ha of “additional land” available of which only 241 ha have thus far been allocated (NTPC, 22 April 2015 briefing). **Were much of this land distributed, it would be possible in theory to allocate around an additional 1.5 hectares in total to each of the 1,155 original resettler households and a similar area to the 441 natural growth ones.** While such distribution goes well beyond CA specifications and cannot be regarded as a requirement, the POE's view is that, given the generally poor soils, often steep slopes and distance from accessible water sources of the available land, an allocation of extra land per household on more generous lines is required and would be more than adequate to sustain households if incorporated and fully used within a diversified production system. It would also leave some land for the next generation, thus helping meet the longer term sustainability objective.

This further distribution, to be a fair one, would have to take account of the great degree of variation in soils, slopes, access to water and proximity to hamlets.

There are some surrounding conditions. The allocation of land for agriculture requires, as the IFIs have emphasized in comments to the POE, “that appropriate and functioning institutions are in place to address land conflict and land allocation issues during the RIP and after RIP closure,” as well as official discouragement of the illegal and excessive inward migration and effective law enforcement to protect village forests and fisheries.

Finally, our constant proviso is that achievement of this new production mix still carries substantial risks, requires ongoing support in the form of technical assistance and institutions, ongoing monitoring and adaptive management, and firm commitments from the other development partners.

If these conditions are met, then the POE considers that the sustainability objective can be achieved. This prospect has been enhanced by the positive decisions on additional resources through to the end of the Concession Period made over the past year by NTPC management and shareholders.

4.4 Governing and managing the land

Arising from the growing pressure on land there are some immediate issues, addressed elsewhere in the report, relating to land use and property rights:

- The pressure to find space for new families: both for their houses and for their livelihood activities;
- The growing competition for land as its use intensifies, both among the resettlers and with outsiders;
- The need for equitable allocation, or reallocation, of land for individual and community use;
- The definition and protection of existing property rights and the settlement of land-related disputes.

4.5 Defining and protecting property rights

The growing pressure on land is leading not only to shortages of housing land and growing competition for productive agricultural land but also to further illegal or informal occupation of land and to a rising number of disputes between and within hamlets about occupancy of land. A useful recent report on land management (Lestrelin 2015) observes the factors identified above and identifies some issues:

- Hamlet boundaries “are often not well known by the villagers, poorly monitored by the hamlet authorities, delimited by unobtrusive white markers and, consequently, often not respected by villagers and outsiders alike.”
- "Encroachments by neighbouring villagers have been reported in some hamlets (e.g. Bouama residents encroaching on Phonsavang land); Outsiders are also reserving land (*jap jong*) belonging to resettled hamlets (e.g. district centre residents in Nong Boua)" (p 10).

We also note that the occupants of some of the additional houses may be there in breach of the CA provision (Schedule 4, cl.8.7.3) that “no establishment of households other than bona fide Resettlers should be permitted in the Resettlement Area”. The IMA reports "92 unauthorized settlers as of 2014" and recommends that action be taken by the District authorities. We agree. Though flexibility is necessary, immigrant households need be primarily restricted to hardship cases involving individuals who are close kin such as a non-resettler widow, divorced woman or an invalid joining a resettler household. The POE is especially concerned about the situation noted above in Phonpanpek where immigrants outnumber resettlers and where immigrants may involve able-bodied households obtaining land and other resources that rightly belong to Nong Boua. Hence as a rule of thumb immigrants, except under extreme conditions approved by Village and District Land Management Committees and by the RMU, should be restricted to individuals.

There is also some evidence of outside speculative interest in acquiring land on the Nakai plateau. There is a small but still disturbing number of reports of villagers selling their 0.66 ha land to outsiders, despite the current moratorium on transfer of title until the end of RIP, as further indication of pressure on land.

Another issue which may already have arisen, and surely will arise after RIP, is where a resettler household agrees to sell its land to another resettler household. The POE notes that in the NT2 case such sales may well be at the expense of a family's natural growth households (hence risking an increase in vulnerable households) for whom arable land on the Nakai Plateau is an invaluable, if not the most valuable, resource. The GoL has, however, advised that preventing land sales after the special conditions of the RIP would be unconstitutional. Both GoL and IFIs see advantages in a free market in land after the end of RIP.

We are also concerned that a new land policy currently in draft may make it easier for concessions to be obtained on village community land, without villagers having decided for themselves how that land should best be used.

The identification and protection of land rights should be the responsibility of local Land Management Committees (LMCs). Lestrelin makes a strong case that they often have not been up to it: "An internship report ... assessing the [additional land] allocation procedure between February and June 2014 pointed towards the limited skills and experience of district staffs and village leaders as key constraints. In most cases, LMCs were virtually not involved in the process and had only very basic ideas about their roles and responsibilities in local land management." Lestrelin also criticised the "lucky draw" system of the District Agriculture and Forestry Office (DAFO) of allocating additional agricultural land and argued for a more decentralised hamlet-based process for allocation.

As a contribution to the draft NTPC Road Map, Lestrelin identifies three objectives:

- Resolving existing inter- and intra-hamlet land conflicts.
- Establishing LMCs as functional and legitimate local organizations.
- Setting up a monitoring and information-sharing system on Community Land Titles (CLT) area management.

He further suggests that it is essential that the current disputes over land ownership and use be resolved before embarking on further additional land allocation. We agree. One obvious problem is that at least some of the land to be allocated has already been occupied and fenced off by villagers. Untangling this situation must be a priority.

The POE further agrees that in the current situation of growing pressure on land a strong and competent local land management capability is an urgent requirement. It is good to see that training of districts and villages has started in Sopma and Bouama and that it will be extended to the rest. We were pleased to see also that the District Governor is setting up a District Land Conflict Management Committee which, we hope, will provide a means of settling disputes between villages and a backstop for land allocation decisions in the village committees.

Overall we endorse Lestrelin's statement of the priorities for the period ahead.

The POE recommends that:

- 6/24** Priority be given to resolving existing land conflicts identified by Lestrelin and the POE during its latest mission before further allocation of additional land with a view to resolving the more serious conflicts no later than the first quarter of 2016. [Binding]
- 7/24** NRO, RMU and District staff start working with and training Land Management Committees during the fourth quarter of 2015. [Binding]
- 8/24** The newly established District and Village Land Management Committees prohibit further inward migration except in special individual cases before RIP is ended, as required under the CA.
- 9/24** NRO, RMU and District staff pay special attention to the situation in Phonpanpek and in other hamlets with recent but pre-resettlement immigrant households such as in Nam Nian, Nong Boua Kham and New Sop Hia which may be attracting new post resettlement, and hence unqualified, immigrant households.
- 10/24** Lestrelin's additional proposals for strengthening LMCs as functional and legitimate local organizations and for setting up a monitoring and information-sharing institution on CLT area management be implemented without delay.

5 FINDINGS AND CONCLUSIONS ON THE FIVE PILLARS

5.1 SUSTAINABILITY OF THE FISHERIES PILLAR

5.1.1 Fish caught and traded, legally and illegally

The legal catch of reservoir fish and consequent contribution to the livelihood of the resettlers appears sustainable at the present population and fishing level. However, new or improved institutional arrangements, some of which involve legal issues such as boundary changes, are essential to ensure more equitable opportunities for resettler fishers, to control the extensive illegal fishing activities, and to ensure that long term management is consistent with the biological needs of the fish resource. Achieving those arrangements will require action by the Central and two Provincial Governments before the end of the RIP.

As the POE noted in Report 23 (POE 2014b), at present the reservoir fisheries are the most successful and most important of the livelihood pillars for the resettler villages. They provide the highest consistent income as well as a significant food source. Recognizing the importance of fisheries, the GOL recently declared a ten year extension of the resettler hamlets' ownership of the reservoir fishery beyond the initial 10 years stipulated in PM Degree 24.

The foundation for fisheries yield is the stock or biomass of the target fish. Fish catches in the Nakai Reservoir have followed the classic pattern. After extremely high yields shortly after the dam was closed, the catch more or less stabilized at a much lower level. Most villages reported to the POE that fish catches had decreased in recent years, although Ban Done reported an increase in 2014. However, the NTPC Fishery Research Unit reports that the catch, and presumably the fish stock on which it is based, has remained relatively level for roughly four years up to 2013 with some increase through 2014 and the start of 2015. The Reservoir Fishery Association (RFA) reported to POE that they had recorded a similar pattern, with gradual reductions to 2013 and an increase in 2014.

These figures refer to the legal catch only. It appears that there is also a very significant illegal off-take of the reservoir fish by outsiders as well as by resettlers themselves. Some resettlers fish in protected areas (areas reserved for reproduction of the reservoir fish) and some sell their catch to outside traders, thus avoiding the seven percent tax on catches that otherwise would go to the RFA to help manage the reservoir fishing for the resettlers.

Most resettlers reportedly fish for home consumption, mostly from village boats, and women and children also catch some fish from shore. Many resettlers also catch fish to sell to augment their incomes. Those who bring their catch to the landing at Thalang usually find available traders from other parts of Laos. However, a common complaint from the villages farther away from Thalang is that traders who buy the fish only come to those villages irregularly, and some Khon Kaen villagers said "never", so that the villagers often have trouble selling their catch even when smoke-dried for further preservation.

The RFA calculates that about 40 per cent of the total catch is illegal. They base this on fish brought past the check points on the Lak Sao road and at Oudomsouk. The NTPC Fishery Research Unit calculates that 20 to 25 per cent of the total catch is illegal but this is probably minimal since it is based only on the fish landings at or near the dam. Consequently the total illegal catch is probably between 25 and 40 per cent.

5.1.2 Sustainability findings

It appears to POE that the legal catch and consequent contribution to the livelihood of the resettlers is sustainable at the present population and fishing level. The legal and illegal

catch combined do not appear to be overfishing the reservoir fish stock yet. If overfishing were to be a problem it would be indicated by reduced size of the individual fish in the catch, but the Fishery Research Unit reports that the size of fish caught has not decreased. Consequently overfishing would not appear to be a problem. Thus this pillar is presently sustainable and complies with the CA objectives in this respect.

At the same time it should be observed that the outsiders' illegal catch, the untidy boundary and administrative situation north of the Thalang Bridge and the problem with some villagers having restricted access to traders are examples of issues which need addressing with despatch.

5.1.3 Measures to be taken

To ensure that the reservoir fishery contributes effectively to the resettlers' livelihood, there is an urgent need to substantially improve the resettler fishers' feeling of ownership of the fish resource, and with it, recognition of their self-interested responsibility to watch for and report or apprehend those conducting illegal activities that undermine their livelihood.

The RFA has made a good start on registering and providing clear identification on all boats on the reservoir, so that illegal activities can be more easily identified, and this important work needs to be completed and maintained. But more effective patrolling in the reservoir and along parts of the shores is essential to further reduce the illegal fishing and trading by outsiders. The key to effective patrolling must be more support for, and training of, each hamlet fishing group (Village Fishing Group (VFG) in past reports). More active efforts by the hamlet fishing groups and resettlers in general will require GOL to provide the necessary policing and legal support for enforcing the fishing and trading rules.

The POE recommends that:

11/24 NRO upgrade and intensify the institutional development and training of each hamlet's VFG by the end of 2016 while GOL simultaneously provides the necessary policing and legal support for enforcing the fishing and trading rules.

5.1.4 Problems North of the Thalang Bridge

The most serious threat to the sustainability of the fishery is the illegal fishing and fish marketing that reportedly takes place in the Khamkeut portion of the reservoir. This area is particularly vulnerable because of the ease of access via the dam road for illegal fishers and traders coming from Lax Sao, Bolikkamsai and other places. Most of the area falls under ineffective WMPA jurisdiction and straddles Khammouane and Bolikhamxay Provinces. It is this serious inter-province and inter-jurisdictional (DAFO, RMA and WMPA) situation that requires attention of the Central Government and the two Provincial Governments.

This is particularly the case with the section of the reservoir between the Thalang bridge and the dam, most of which is in Bolikhamxay Province's Khamkeut District rather than Khammouane Province's Nakai District. The resettler villages on the peninsula leading to the Thalang bridge have very small areas of the reservoir south of the villages legally available for their fishing. In fairness to these villages consideration need be given to opening part of the now-protected area of the reservoir downstream of the Thalang bridge to resettler fishing - at least that Nam Malou area adjacent to the villages which GOL has added to the resettlement zone.

In the WMPA section of this report (Page 74) we have recommended the establishment of a permanent outpost at Old Sop Hia to strengthen fisheries protection but action is also required on access and jurisdiction.

The POE recommends that to resolve the problem of split jurisdiction of the reservoir fishery and before the end of the RIP, the Office of the Prime Minister immediately assume responsibility for devising and implementing a solution along the following lines:

12/24 The GOL change boundaries and rules so as to allow the Thalang peninsula resettler villagers reasonable and legal access for fishing in the area downstream from the Thalang Bridge. [Binding]

13/24 Until boundary changes occur, change rules so as to allow Thalang peninsula resettlers to fish the waters between the downstream Nam Theun channel on the East, the entrance to the Nam Malou waters, and the downstream reservoir area adjacent to the Nam Malou land subsequently included within the resettlement zone. [Binding]



POE's Lee Talbot with DEB, NTPC and RMU staff on visit north of Thalang Bridge

Additional areas for improved fisheries' contribution to the resettlers' livelihood should include alterations to the existing areas closed to fishing and better definition of what is needed to protect the reproduction of the fishes. To maintain and expand the reservoir fishery there is a need for broad biological/ecological studies to determine which parts of the reservoir need to be maintained as Special Conservation Areas closed seasonally or permanently not just to fishing but to all foraging activities to protect areas that are biologically important in the reservoir and impinging on dry lands. The NTPC Fishery Research Unit's plans to undertake scientific studies to address these issues need to be broadened in their scope.

The POE recommends that:

14/24 Biological/ecological studies of the reservoir be broadened to determine which parts of the reservoir and which seasons need to be closed to fishing and other foraging activities to protect areas and/or times that are biologically important for reproduction of fish and maintenance of other natural resources.

There is also a need to develop more effective mechanisms for fish trading to make sure that the fish that are landed are purchased efficiently. Perhaps one answer would be cold storage facilities (simple insulated cold boxes, not ice-making facilities which have proven impractical) at the more remote fish landings combined with arrangements to telephone traders when a load of fish is available for sale.

Some resettlers, almost always women, are adding value to the catch by various forms of processing including dried fish and fish sauce. The NRO is currently supporting this activity in three hamlets. Processing could be extended more widely. It is an important means for women to supplement household income and increase their influence in the household economy.

The POE recommends that:

15/24 NRO extend the program of fish processing for women from three villages to all hamlets which express an active interest in this program. [Binding]

5.2 SUSTAINABILITY OF THE VILLAGE FORESTRY PILLAR

5.2.1 Sustainability a long way off

For the villagers the chronic weakness of this sector means that at this time they are having to find additional sources of income from other sources. Encroachments, often by the villagers themselves, onto forest-designated lands, and inappropriate uses, like ill-planned and costly burn-offs, have resulted. Meanwhile the absence of a systematic program of fostering naturally regenerating seedlings, for example, undermines sustainability well into the future. As pointed out above, all stakeholders have an active role to play in rescuing this vital livelihood pillar.

Some steps forward have been taken. Avoiding further waste has been headed off by reducing the annual cutting quota from 6,000 cu.ms to 2,000 cu.ms.in the current year. There has been more emphasis on producing high quality/high return logs for the Japanese market, in part because the overall high official royalties and taxes provide a disincentive to process timber for the local or regional lower value markets, the tax/royalty on higher value products being proportionately lower. Thai markets are nevertheless taking Nakai timber and a contract for manufacturing 2,000 timber doors per month for Thailand has been signed.

A proportion (only) of the outstanding arrears owed the VFDC by the former sawmill operator/wood seller have been recovered and a proportion of that has been distributed to the resettlers in the form of dividend payments.

However, the dividend, paid two and a half years after the last one, is a paltry LAK150,000 per VFDC shareholder (each member of a resettler family). One angry Naiban commented to the POE that he could make more out of one night's fishing. He also asked what had happened to the revenues from the many logs removed from the hamlet forests over the past three years, cited the long decline over the years in the size of the dividend, lamented its infrequency and recalled that the forests were supposed to produce much of the resettlers' income but had not and the villagers ask why.

5.2.2 Fundamental change required

Achieving sustainability in the village forestry sector requires a fundamental change of approach by the major stakeholders. The failure of this critical sector to produce the one third of resettlers' incomes originally planned, the maladministration over a decade of the harvesting, processing, marketing and sales of a valuable resource, the crippling level of levies, fees and taxation, and the inadequate support for the whole operation in recent years by the relevant GoL agencies and NTPC are all factors affecting the POE's conclusion that **the state of this sector is a major reason for extending the RIP beyond 2015**. One reality is that the resettlers have been forced by this sectoral failure to seek elsewhere the income needed and have resorted to illegal or unwise practices to do so. It is clear that the village forestry pillar requires additional support which could come from GoL agencies, NTPC and/or the IFIs.

While it would be possible to outline a series of steps through to 2035 to attempt to right the situation it is clear that some prior decisions have to be taken if such courses of action are to have a chance of being successful. The GOL at a high level, NTPC and the IFIs all need to rethink their approaches and level of commitment to meeting the CA's objectives in village forestry. And the villagers themselves have to be convinced that their active participation in helping manage some aspects of the operation will bring more substantial rewards than have been forthcoming thus far.

5.2.3 GOL political support needed

The single most important action needed is the provision of overt and public GOL political support at a high level for a renewed effort by all parties to address the still valid CA requirements. The historical record of GOL agencies in providing constructive advice and assistance to the endeavour to set up a productive Community Forest Program on the Nakai Plateau is not impressive. There appear to be strong bureaucratic and commercial interests working against the concept and practice of such a venture. A renewed affirmation at Ministerial level of the Government's commitment to the Village Forestry concept as set out in the CA would be a large step forward. An instruction to the relevant GOL agencies to help foster the process would be invaluable and a formal invitation to the NTPC and the IFIs to re-engage in the process of rehabilitating the venture would be most helpful. **The POE underlines that without this support the pillar will continue to be non-performing, with serious consequences for sustainability of the project overall.**

Beyond such action at the political level, a stepped up effort by GOL law enforcement agencies to counter illegal activities in terms of encroachment on resettler forest (and other) land and illegal logging is called for. Such illegal activities will go on jeopardizing the efforts to raise income levels and achieve sustainability unless they are more effectively brought under control. Similarly, there is an urgent need for more equitable sharing of NT2 forestry revenues between the Government and the resettlers.



Illegally harvested rosewood under resettled houses

There are two other calls for action by Government. The first is to authorize the Provincial and District authorities to widen the membership of the largely ineffective existing Village Forestry Development Corporation (VFDC) Board in order to convert it to a Nakai-wide and representative Board with strong representation from the village institutions and

sources of independent expertise to provide inter alia advice and direction for the VFDC. The second, referred to above, is to persuade both the NTPC and the IFIs to become engaged in the upskilling and upgrading of forest management institutions at VFDC and village levels, to undertake a long overdue forest inventory and to help lift the performance of the VFDC sawmill. There is a crying need for expertise in these and several other fields (see below). The role of the NTPC and the IFIs will be a key factor if the present situation is to be righted.

These and other proposals requiring enhanced Government action and a re-engagement by the NTPC and the IFIs are set out in detail in the text which follows.

The POE recommends that:

16/24 The GOL, at a high level, review the present state of the NT2 forestry sector and restate the commitment of Ministers to a renewed effort by all stakeholders to meet the requirements of the Concession Agreement in this vital sector, to countering illegal activities such as unlawful logging on hamlet forest lands and to renegotiating a more equitable basis for sharing NT2 forest revenues between the GOL and the resettlers.

5.2.4 A two-phase approach

On the assumption that GOL Ministers respond positively to the call above for a renewed commitment to the rehabilitation of the village forestry sector on the lines set out in the CA, what should follow? A two-phase approach is called for. The immediate priorities are to engage both the resettlers and the stakeholders actively in the rehabilitation processes, to adjust the taxes and levies so that a more equitable revenue sharing system is in place and to lift the performance of the VFDC across the board so that pre-tax revenues are lifted and the confidence of resettlers in particular in the forest sector begins to be restored. That phase is likely to take a minimum of two years. The second phase, post 2017, would address the further strengthening of the administrative and technical capacity of the hamlet institutions and a gradual transfer of additional management functions to the proposed Hamlet Forest Management Committees (HFMCs), the appointment of a trained Lao manager of the VFDC, the extension of the sales and manufacturing activities of the VFDC and the initiation of long term forest regeneration and restoration programs at village level.

5.2.5 Community ownership and participation in management

The most demanding part of the first phase will be the creation from scratch of working HFMCs in each hamlet.

It is the POE's firm view that moves toward heeding the CA's calls for "forest development and management by villagers, for villagers" and for a sustainable forest plan based on the principle of community ownership of the resource are overdue. The 16 individual hamlet communities, who are the legal owners and users of the former VFA land, should eventually undertake many of the tasks involved. The logic of the Participatory Land Use Planning (PLUP) process, which followed the CA guideline by transferring legal title of the village forest lands to the communities themselves, should be followed through in due course. This would be partially achieved by transferring several key planning and management functions in the sector to reactivated Hamlet Forest Management Committees when the capacity to handle these functions has been created. In the interim the HFMC members, who should desirably be elected to their position and should be consulted on their role, should become involved in such initial tasks as overseeing the collection of NTFPs and silvicultural work, patrolling and actively protecting the forest areas, taking a gradually

expanding part in the planning for reforestation/regeneration activities and providing local knowledge for the forest inventory exercise.

Getting the Committees at the hamlet level operational and beginning to be effective will take considerable time and investment in capacity building. It is unrealistic to expect that the HFMCs will be in a position to formulate and maintain their own forest inventories or individual Forest Management Plans for each hamlet within the next two years, assuming that this further step of decentralization is judged advisable in the course of time. They will nevertheless have an informed and active input, as noted above, in putting together an overall inventory and should participate in the drawing up of an overall Forest Management Plan for the resettlement forests as a whole over the next two years. Beyond that period the pace and direction of devolution of further tasks to the HFMCs - planting, reforestation, logging, extraction, processing and manufacturing - will be determined by progress in taking over successfully the initial tasks.

The POE recommends that:

17/24 The necessary steps be taken by the Nakai District Governor, through a participatory process, to reactivate Hamlet Forest Management Committees in the 16 hamlets as envisaged in the Concession Agreement, their initial functions being to take an active part in the forest inventory exercise in their forest areas, set up systematic patrolling of the forests, help plan and implement silvicultural programs and oversee the collection of NTFPs. [Binding]

18/24 In the second phase of the forestry rehabilitation program, beginning in 2018, there should be a gradual devolution of further roles as appropriate to the HFMCs in such activities as planting, reforestation, logging, extraction, processing and manufacturing. Employment generation for villagers will be a key objective.

5.2.6 Who does what?

Management of the more technical processes in the interim, plus capacity building on the harvesting, production and processing sides, will need to be in the hands of Technical Assistants (TAs) provided either by NTPC or the IFIs. A primary function will be to help select and train their Lao successors in these roles. The TAs should be required to operate as a coordinated team, working within the overall Forest Management Plan, working alongside VFMCs and reporting and providing expertise through a team leader to the expanded Forestry Board.

This raises the questions of what technical assistance is called for, where such technical assistance may come from and where oversight authority may lie during the first planning and capacity building phase of rehabilitating the hamlet forestry sector. The POE's view is that the logic of the situation is that the capacity building and forest management advice roles **at the hamlet level** rest most easily with the NTPC, which now has some experience of working with village bodies. It is also true that the above roles are assigned to the Company in the CA, though they have not, for a variety of historical reasons not always NTPC's fault, been adequately handled. Consulting with the HFMCs on the way forward and developing with them a consensus on this sensitive subject would be a first task. Setting up and providing administrative and technical back up to the HFMCs would follow. A new senior NTPC staff position, filled by a qualified manager with extensive experience in helping establish communal forest management systems in the developing world, would be required. It would make sense, in the interests of continuity, for this appointee to be the overall team leader of the rehabilitation exercise, responsible inter alia for providing advice

to the Forestry Board and overseeing the work of the TAs including those working with the VFDC manager.

The more specialized roles in the first two year phase, when the village forests will most logically be managed as a whole, should be filled by World Bank - and/or ADB - TAs as they become available. These roles would include producing, in consultation with HFMCs, an up to date overall forest inventory, formulating – also in consultation with the resettlers – an overall Forest Management Plan, strengthening the operations of the sawmill by provision of a short term mill operations manager to train a VFDC sawmill operations manager and building up marketing capacity in the VFDC through recruitment of a forest species and marketing specialist. Additional expertise will be called for, including a financial management specialist to advise on how funding inputs and revenues should be managed and fairly distributed, given the considerable variation of timber and NTFP resources among the 16 hamlets.

The POE recommends that:

19/24 The NTPC, with the GOL’s authority, initiate the forestry sector’s rehabilitation by providing a suitably qualified and carefully selected manager on its Nakai-based staff to help set up and begin training the HFMCs in each hamlet in their initial tasks and to coordinate the work of the externally funded technical assistance team whether working in the hamlets or with the VFDC. [Binding]

20/24 The GOL formally seek technical assistance for the first phase of the rehabilitation from the IFIs as outlined, including short or longer term specialists as appropriate in the areas of forest inventorizing, sawmill operation, forest management planning, marketing and financial management. [Binding]

21/24 A forest inventory be formulated as soon as feasible, with technical assistance and advice as specified provided by the IFIs (or NTPC, as agreed between the parties) and again through a consultative process involving the villagers, for each hamlet’s forests and a consolidated version for the forest estate as a whole. [Binding]

22/24 A similar participatory process be followed in formulating an overall Forest Management Plan with technical assistance from the forest management planner, species and marketing specialist (who needs expertise in NTFPs and their domestication as well as in timber species) and a community forest management specialist. [Binding]

Assessing what external expertise will still be required in the post-2017 phase will be better undertaken during 2017 but it seems likely that there will be an ongoing requirement for external forest management and marketing expertise, at least, for several years of this phase.

5.2.7 The VFDC’s future

The emphasis above on the eventual transfer of several basic planning and management functions to hamlet level does not imply that the VFDC should be restructured out of existence. An upgrading of VFDC planning, management and financial skills and probably the replacement of some mill equipment will be involved if the villagers decide eventually – as “economies of scale” would seem to dictate - that pooling of harvesting and milling resources, information exchange and large scale transport and marketing functions in this way would continue to make good sense well into the future.

It is on this basis that the recommendations above for technical assistance to the VFDC be provided. In an appropriately phased program, other technical expertise will be required in due course. Thus, from a medium term perspective (a year or more ahead) there may well be a need for a sustainable forest management adviser, a strategic planning adviser to look at the range of options available to the villages for forest land use and development in the longer term and possibly a team to undertake a Sustainable Forest Management Certification Audit. But these are issues for further down the track. The focus at this point should be on establishing the beginnings of a communal forest management system on the Plateau as envisaged in the CA and lifting the returns to the villagers to a more encouraging level. Those are the most effective ways of attracting resettler buy-in to the strengthening of the forestry pillar and to preventing misuse of the forest resources.

5.2.8 VFDC Board reconstitution

The POE has considered whether there is a case for maintaining a VFDC Board at this juncture. On balance the Panel feels that a communal village forestry operation does not require a national or even Provincial level oversight mechanism and would be inconsistent with the GOL's decentralization philosophy. The resettlers may well feel that a renamed and remanded Communal Forestry Management Board, made up largely of HFMC nominees plus the VFDC manager and the proposed NTPC Forestry Manager, would contribute to a coherent approach across the District to forestry pillar matters. Such a Board would address issues which span hamlet boundaries, approve an overall Forest Management Plan and provide a basis for other collective action.

The POE recommends that:

23/24 The Provincial Governor and the Nakai District Governor consult with the resettlers on whether the existing VFDC Board might usefully be converted into a Plateau-wide Communal Forestry Management Board made up of HFMC nominees, the VFDC manager and the recommended NTPC Forestry Manager, to discuss matters of common interest, settle conflicts and make decisions on matters of collective importance such as approving a consolidated Nakai Forestry Plan and managing collective assets. Such a reconstituted Board, if agreed upon, would also inherit the functions of the existing Board. A new Decree would presumably be required to authorize the setting up of the new Board.

5.2.9 Re-engagement by stakeholders

It is understood that proposals for the provision of expertise, somewhat along the lines of those set out above, are now before World Bank decision-makers. A move by the Bank will, we are assured, immediately stimulate further help from NTPC which has a big stake in ensuring the success of potentially the second largest income earner for resettlers. The POE cannot overstate the necessity for substantial progress to be made over the next two years in rehabilitating the Nakai village forestry sector. The sector has attracted little support from either domestic agencies or international assistance over recent years and has gone downhill rapidly as a result. **It is time for the GOL, the World Bank and the Asian Development Bank to step up and re-engage in this vital sector for the future of the resettlers and the project.**

The task is no easy one. Achieving a unified approach among 16 hamlets will be a challenge. The POE is well aware that potential problems will arise because of inequities among hamlets over the extent of both forest and NTFP resources held by them. Some conflict between hamlets or within a village of two unequal hamlets will arise because the

value of their forest resources varies significantly. But given that future forestry depends on the hamlets working together, these conflicts must be resolved. The mechanisms for such resolution are being established at District level. This is encouraging.

It should be stressed that the courses of action envisaged above are not only CA-mandated but, equally important, accord closely with the bottom up approach to development now being introduced into the NT2 project by the Company, as well as with the decentralized model of the GOL itself and with the Community Land Title regulations, which have themselves been developed and approved by the District and Provincial authorities. The actions recommended are thus more orthodox in their direction than the existing dysfunctional arrangements.

5.2.10 Inventorizing and long term prospects

Some informal reports from qualified observers suggest that there are more substantial reserves of exploitable timber in the hamlet forests than has been supposed. Putting together an authoritative inventory is thus an essential first step in formulating a realistic forest-wide Management Plan. Again the history of unimplemented or failed forest inventory exercises in Nakai suggests that this needs to be a well-planned and participatory operation conducted by independent and experienced outsiders. The experts would advise on what species of tree – and, with villager knowledge, what NTFPs – might be grown in which location, who would be responsible for managing specific tree or NTFP stands, whether production would be for domestic use or sale, and in the latter event, whether and how production would be taxed. They also need to advise on how the funding inputs and revenues can be managed and fairly distributed, given the considerable variation of timber and NTFP resources among the 16 hamlets likely to be revealed by the inventorizing. Final decisions on what forest land should be designated for what purpose should be however made by villager agencies, notably the new HFMCs.

A case has been made for revisiting the land use planning now in place on the Plateau, the argument being that the requirements of the original resettlers and the natural growth households for more agricultural land would be more surely met by redesignation of some of the forest land, especially more fertile and well-watered strips, for cultivation. Whether recommendations for such a partial rezoning - where supported by the hamlet people - might be incorporated in the inventorizing operation is worth investigating by those designing the inventory exercise.

Projections of returns from regenerated and reforested areas and an analysis of the distribution of returns will be required for longer term planning decisions to be made. How important the initiation of a program of planning and planting trees and NTFPs to promote regeneration of existing forests and reforest cutover areas, as contrasted with relying on natural regeneration, is a matter of debate among foresters who are familiar with the South East Asian forest scene. Looking to sustainability in the longer term, however, it is not too early to be making decisions within the next three to four years about hamlets planting, for example, plots of slower growing high value tropical hardwoods like teak, mahogany and rosewood. But natural regeneration will occur in the interim so accelerated reforestation may not be a priority area for investment of scarce funds at this point.

5.2.11 Fees, taxes and levies

Several prominent villagers called the POE's attention to the very substantial cut the GOL, Province and District take from the earnings on every log. According to information provided from an authoritative source to the POE on this mission, at present the combined total of taxes, fees and levies imposed on the VFDC's operation represents upwards of 70%

of the total income received by the Company's sales. Adding administrative and transport fees brings the total to well over 80%. "Unofficial" and illegal fees add to the burden. This means that the VFDC operations are providing the various levels of government and to unofficial quarters a substantial unearned income instead of providing the designated contribution to the sustainability of the resettlers' livelihood income that was the original purpose of the program. Clearly some Government revenue payment is appropriate but the above is a truly unsustainable proportion of earnings and should again be addressed by GOL at a high level.

Officials, who have not favored this endeavor to establish a community forest program, headed off the last attempt by DPM Somsavat Lengsavad to inject more fairness into the situation.

The POE recommends that:

24/24 GOL Ministers review the inappropriately high level of taxes, fees and levies imposed on the village forestry program and impose a lesser and fairer burden on the resettlers by either setting a cap on total taxes, levies and fees, establishing a limited tax exemption, or agreeing on tax relief or a lower tax rate.

5.2.12 Getting the right people in place

The POE would wish to underline that recruitment of technical assistance is not only about the appropriate technical background of candidates. The personality and relevant field experience are even more important. The sort of technical assistance needed in this rehabilitation of the NT2 communal forestry program should not require large inputs of capital or extensive use of expatriate expertise. What is needed is people with rural development and community forestry experience who can adapt to the different hamlet situations, who can work alongside and with the villagers and who are committed to actively encouraging them to take over planning and management functions at the local level. The POE strongly urges both the Banks and NTPC to re-engage by contributing to what is a long overdue series of changes in the sector in the ways set out in the set of recommendations above.

5.3 SUSTAINABLE AGRICULTURE ON THE NAKAI PLATEAU

5.3.1 Introduction

Sustainability of livelihoods on the plateau depends on the relationship between the land, other natural resources, and its people. This is nowhere more marked than in the case of the agricultural sector. Although the POE continues to believe that there is sufficient land on the plateau to support mixed-production livelihoods, that depends, in the case of both agriculture and livestock, on efficient and productive use of the land.

5.3.2 An upsurge in agricultural activity

POE hamlet and village interviews during April 2015 confirm NTPC's April 22, 2015 briefing of the POE that an upward trend in resettler agricultural intensification and production is underway in the resettlement area. As will be apparent from what follows below, the sector is still a long way from having reached a sustainable point - and there are question marks over the continued problems developing and maintaining working irrigation systems. In that sense the CA requirements have not yet been complied with, though there has been encouraging progress in the past year or so.

What is now necessary is sustaining that upward trend. According to the debriefing, following a significant drop in households cultivating their 0.66 ha holdings in 2014, 0.66 ha plot use has increased slightly during the first quarter of 2015 with a record 912 households (70%) now "committed to cultivate in 0.66 and 0.22 plots" during the current rainy season. In regard to CA required fencing, NRO has made available at resettler request 11,024 rolls of barbed wire for fencing 947 0.66 ha plots.

The most promising agricultural development over the last few years has been the increasing take up of agroforestry opportunities by resettlers. According to a recent report on the state of agroforestry (Furuoc-Paelmo 2015), 346 households are currently involved in agroforestry. The first agroforestry crops have been sold, experimentation is proceeding with inter-cropping, and the Agroforestry Team is involved in an effective Participatory Agroforestry On-farm Monitoring (POFM) program. What is especially gratifying is the range of resettler initiatives in response to the Agroforestry Team's work. However, because of the delayed initiation of the Agroforestry Program until 2013, Furuoc-Paelmo concludes that "the program still needs 5-7 years before a full adoption is realized and has prepared the community for a full turn over. The adopters still require technical guidance to build their skills and competence on the management of agroforestry farms." More specifically, strategies "that should be implemented" include "provision of continuing technical assistance until productive fruiting stage of the farmers" and "establishment of [a] market network for the agroforestry products."

During this visit to Laos, the POE was able to confirm that resettlers were indeed beginning to pay more attention to the use of NT2 project provided 0.66 and 0.22 ha plots. This was in contrast with a previous visit only six months earlier when the POE had to record that agriculture remained a disappointing sector with low utilization of most plots and many resettlers preoccupied with more remunerative and usually less labor-intensive pursuits like fishing and timber poaching.

Why the new enthusiasm for agriculture? It appears that a number of factors are at play. First, the illegal timber trade has fallen off in part because of lower prices and in part because of the over-harvesting of the most accessible hardwoods. Fish catches have also not been as remunerative as in some earlier years. So many of the pragmatic villagers have turned back to agriculture and, precluded by the District from expanding their areas under

swidden rice cultivation, have come upon another apparent bonanza: the planting of cassava for processing by a new Chinese-owned factory in Gnommalath. There was also an incentive being provided by NTPC: free barbed wire was being provided to accelerate the use of better fenced 0.66 ha plots. The spread of agroforestry was thus enhanced and additional lands provided to villagers were also being converted to paddy - the sustainability of which needs to be carefully monitored, given concerns about the suitability of some soil structures for paddy.

All of this new interest in the neglected agricultural lands was observed by the Panel in the course of its interviews with villagers in 12 hamlets. Perhaps the most pleasing finding was that the household initiative, productivity and income that the POE has been documenting over the years have been slowly increasing. In regard to livelihoods that trend must continue throughout the RIP.



Madame Eng in Phonsavang with garden

As noted, in a number of hamlets some households on their own initiative are already using their land, or preparing it, for paddy. Presumably associated with paddy development as well as with other irrigated crops, a number of hamlets wanted more gully dams. That request is strongly supported by the POE which repeatedly has stressed the importance of gully dams being built where appropriate sites exist. Wherever possible they should be sited sufficiently below the reservoir's full storage level so that they will fill annually as the reservoir fills. Gully dams are multi-functional, providing water for irrigation, water fowl and fish production, and livestock.

In a number of hamlets, the POE found elderly women using available irrigation water to grow a number of crops for sale. One woman, in NTPC's agroforestry program, has sold produce on two occasions during the current dry season and her activities are having a demonstration effect with other women. Only in Khon Kaen were no agricultural sales

reported and that was due, as explained in a group meeting, to Khon Kaen being the furthest hamlet from a market and with no traders coming even for fish.

Especially gratifying was the situation in Nong Boua which recently has been the poorest village. Originally resettled as a pilot village, Nong Boua's women had begun to benefit from the sale of irrigated dry season crops to the nearby Oudomsouk market. The irrigation program, including a functional Water User Association (WUA), was unfortunately stopped by NTPC in 2006 with the result that poverty increased. According to POE village interviews this April, however, irrigation is again producing vegetables with some households using their own pumps to access water from the irrigation system.

Nonetheless, customary agriculture continues to predominate on additional lands which constitute 80% of land under cultivation. But on those additional lands the POE has seen the beginnings of paddy, vegetable and agroforestry plots.

5.3.3 Irrigation

Irrigation is the key to the essential conversion of the resettlers' former system of swidden agriculture to the more intensive multi-purpose system of household production required if existing land resources are to sustain resettler livelihoods. Under the CA and before the end of the RIP, NTPC is required to provide "0.66 ha of cleared and irrigated land per household, of which at least 0.16 ha is developed and can be used for paddy rice production" (CA Vol.2A, Sched.4.15.1). Meeting this requirement includes, at NTPC expense, rehabilitating or replacing whatever poorly designed, constructed and/or located non-functional irrigation systems are needed for meeting the above CA requirement.

Since the POE's last report in December 2014, major progress has finally begun with irrigation due to the formation of a POE recommended irrigation team that now draws on RMU, district, provincial and NRO expertise. According to NTPC, 82 of a total of 228 irrigation systems "are operational for 149 plots" representing 36 percent of the total irrigation schemes and 12 percent of the total irrigated area (NTPC 2015a). It is expected that of the total schemes, 176 will be prepared in time to be operational for cultivating 787 0.66 ha or 0.22 ha plots during the 2015-2016 wet and dry seasons or approximately 65 percent of the area that can be irrigated.

That important goal is unlikely to be reached, however, since SERF is expected to fund the repairs and, according to NRO's August 13, 2015 Weekly Memo, SERF only "has agreed to repair 159 irrigation systems (69% of total) 'based on farmer proposals of more than 700hhs'." Though 15 hamlets now have improved irrigation system regulation books, there is very little information available to the POE on how many households in how many hamlets are actually practicing irrigation on 0.66 ha and 0.22 ha plots or adjacent to gully dams; on what proportion are working together within functional WUAs or only as separate individual households; and on crops grown, yields and sales. In effect to date emphasis has been on the physical systems as opposed to their use by resettlers. Nonetheless, after many years of unsatisfactory irrigation development, progress is occurring.

It will be important for continued progress, that the Irrigation Task Force is maintained. The RMU through the activities of RMU irrigation expert Chanthapanya has been an active and major participant in the current program and it is vital that the RMU is funded to continue that leadership.

The POE recommends that:

- 25/24 NRO and DAFO concentrate on achieving their target of 65% of irrigable land having systems in place and operating for the 2016/2017 dry season, while aiming for the CA target of having all households with access to irrigated land by the end of 2017. [Binding]**
- 26/24 The Irrigation Task Force ensure the presence of functional water user associations for each operational irrigation system. [Binding]**
- 27/24 During the 2015-16 dry season and following the harvest, two monitoring studies be completed in each hamlet on functioning irrigation systems, water user associations, crops grown and yields. [Binding]**
- 28/24 RMU staffing and budget play a major role in ensuring, with DAFO and the NRO, that these irrigation objectives are achieved. [Binding]**

In the next section we recommend a specific role for natural growth households in the further development of irrigation.

5.3.4 Natural Growth Households and Agriculture

In past reports the POE has stressed the importance of natural growth households as one of the NT2's most important assets. Their livelihood development is essential if CA-required sustainability is to be achieved. Well over half of such households, regardless of their current preferences, are liable to find their livelihoods more dependent on Nakai Plateau opportunities, with agriculture and fisheries being the most important, than they might prefer.

This situation is because, as with other resettlers impacted by dams built in isolated areas, members of natural growth households will not have had the education and experience to compete with the large majority of their age mates elsewhere in Laos. For that reason, and because they are, on the other hand, better educated and more familiar since childhood with what is a new lifestyle for their parents, natural growth households should be actively encouraged and trained to play an enhanced role in the agricultural pillar.

While the POE welcomes NTPC's recent agreement to emphasize the development of natural growth households, their increased involvement in agriculture requires access to adequate and owned arable land, including irrigated land, as well as land for housing and household gardens. At present they do not own such land though some have access to their parents' land.

The NTPC's survey of such households (Bouapao 2015b) showed that many of them do not appear to be receiving the full benefit of housing and services. Only 30% said they had their "own" housing land; many are sharing plots with their extended families though entitled to their own plots; and the rest seem to be settled on "free land" that the village has found for them. They are similarly often (riskily) sharing access to electricity connections with other households; their access to toilets seems significantly inferior to resettlers, with many having no direct access to toilets; and in some cases women complained that they are a considerable distance from a pump for their household water.

While visiting four hamlets in the northern cluster, one POE team found the access of natural growth households to land inadequate in each case. In Sop Phene only 5 of 12 married natural growth households owned their own houses but none owned the land on which their houses were built. Though the Naiban (hamlet headman) noted that some land could be reallocated for agriculture, he expected that there might be opposition to this. In Thalang, the land situation is desperate with all 34 natural growth households apparently sharing their

parents' land. Though some have their own houses, no home plot land has been allocated. Use of unoccupied Lao Army land north of the Thalang Bridge would be of major help if GOL was agreeable.

The POE recommends that:

29/24 GOL reach a decision no later than the end of 2015 on whether the old Army base land downstream from Thalang could be used for agricultural purposes by natural growth households in Thalang and Sop Phene. [Binding]

For the 24 natural growth households in Nam Nian, all arable (and most housing) land is currently occupied by others. Though Nakai District help will be needed for dealing with the natural growth land problem, assistance requested from DONRE a year ago has not been received. In New Sop Hia, the 14 natural growth households all share agricultural land with their parents since the only available land is in the drawdown area. The hamlet land situation is worsened because of land conflict with Nong Boua Kham which requires GOL intervention.

Seeking solutions to providing arable land for natural growth households must be a priority. In that regard, the POE will be seeking greater clarity in ongoing negotiations with NTPC and Nakai District about the area of land, including irrigated land, proposed for natural growth households.

The POE recommends that:

30/24 Proposals to solve the arable land issue pay special attention to encouraging and training natural growth households to become leaders in the agricultural sector inter alia by using unutilized but repairable NRO irrigation systems. [Binding]

31/24 At least one such system per hamlet be operating by carefully selected natural growth households for use during the 2015-2016 dry season. [Binding]

32/24 In the meantime, natural growth households be surveyed to identify, recruit and begin training appropriate irrigation candidates no later than the fourth quarter of 2015.

33/24 Candidates for irrigation training be both women and men since the former are apt to be the principal farmers on smaller irrigated plots. [Binding]

5.3.5 Contract farming of cassava

It is far from clear what the net effect of the rapid growth of contract farming of cassava noted above will be though it will bring short term returns to a proportion of the cultivators. Cassava has long been a "hunger relief" crop on the Nakai Plateau and still is in the catchment. Some years ago Khammouane Provincial officials looking for industrial crops for villagers to grow suggested that cassava be cultivated in Gnommalath along Route 12 at the foot of the Nakai escarpment. That idea was implemented in 2014 at which time the POE visited in February a Chinese-owned cassava processing factory under construction in the suggested area.

During the POE's current visit to Laos, resettlers in a majority of the villages visited had begun to grow cassava as a cash crop for the Chinese factory with most having signed on to a five year contract. In Sop On 85% of households had signed on, while 5 to 28 households were growing cassava in eight other villages. In Sopma, Lestrelin 2015 reported 60 of 67 households had started growing cassava in 2015 in their 0.66 ha fields which had been under fallow for several years.

Taking up cassava could not be a better example of the willingness of resettlers to try new ideas and hence of the need for NTPC and GOL to work much more closely with the population of the 16 hamlets in the implementation of the five pillars and essential cross-cutting issues. However, far more attention needs to be paid to whatever risks may be involved.

At least some resettlers have been told that risks are involved in growing cassava. The Naiban and others in Sop Phene were aware that cassava production may decline during the period of their five year contract. They said they would adapt and use the land for other purposes. The Chinese factory has explained to some that soil fertility will be adversely affected in 2-3 years, hence the need for factory-provided fertilizer, while Sop On farmers, alerted to the risks, plan to alternate and/or combine cassava with legumes and other crops. How the provision of fertilizer will be funded is unclear, as is information on alternative crops once the fertility of the soils has been eroded. The POE is informed that in neighbouring Thailand the cassava yields fell after three years and only heavy fertilization has enabled a switch to growing sugar cane and pineapples as a substitute. So there are potential sustainability problems ahead in relation to cassava.

The POE recommends that:

34/24 The provincial officials involved in promoting cassava cultivation, DAFO in Nakai District, and NTPC meet before early in the fourth quarter of 2015 not just to establish a general cassava policy but also, with the resettler growers, to agree upon an environmentally and economically acceptable system of cultivation. [Binding]

5.4 SUSTAINABILITY OF THE LIVESTOCK PILLAR

5.4.1 Livestock as an income source

Livestock is a livelihood pillar that shows as yet unrealized promise for the sustainable improvement of livelihood of the resettlers on the Nakai Plateau. If the villagers are willing to embrace new techniques, livestock production could become a profitable contributor to village incomes. While the changes required for cattle and buffalo will involve a shift in mind-set which will take a longer time to achieve and will require continued expertise dealing with pasture development in particular, planning and developing a successful small stock program for women should be feasible by the end of 2017. In the interim, compliance with the CA's sustainability goal is not in sight.

Small livestock on the plateau includes pigs, ducks, and chickens, which are primarily the responsibility of women some of whom already raise pigs for sale. An ongoing small livestock vaccination program already exists. The most recent figures are that 41.3% of poultry and 38.7% of pigs had been vaccinated through March, 2015.

The POE recommends that:

35/24 NRO and DAFO investigate the extent to which women who are active in agricultural activities in each hamlet would be interested in a program breeding pigs, as one example, as a cash crop for meeting the rising demand for pork in Laos and in China especially.

36/24 NRO and DAFO utilize one of the three agricultural research stations for small stock breeding and extension purposes for women. [Binding]

Large livestock including cattle and buffalo are the responsibility of men. Because of their potential contribution to the livelihood of the resettlers and their importance as a source of cash for emergencies, large livestock have been of primary concern both to the resettlers and in the Livestock Pillar. Currently the number of livestock has been increasing, and according to the LTA, it is close to the carrying capacity of the Nakai Plateau with the present husbandry practices. In the past many buffalo and cattle have died, apparently of starvation as well as disease. This does not appear to be happening at present although the animals are very thin and are expected to remain so until the rainy season brings new fodder.

Most of the large livestock are managed in the same cultural traditions that existed prior to resettlement. They are maintained as walking bank accounts, for prestige and for insurance, not as a cash crop that will add to the resettlers' cash incomes. They are usually only sold for emergency or special purposes, such as family celebrations. They are allowed to roam freely, grazing and browsing in the forests and, unless excluded by fences, in cultivated areas such as gardens and crop lands.

The 2014 report on Pasture and Livestock Development for NRO (by Bruce Cook) concluded that "Current practices in relation to crop and stock management are seen as unsustainable and will continue to result in land degradation and weed invasion. Farmers will need to change their attitudes." (Cook 2014). There is a clear need for pasture development to provide for increased forage and higher stocking rates, but only a very few resettlers have tried to raise pasture forage. One problem cited is that the livestock or even, in limited cases, wildlife, invade the growing pasture plants. In one village the POE was told that the recent provision of barbed wire by NTPC would allow them to fence and raise pasture, and several of them are already doing so. We observed one such endeavor in Sop Hia, for example (see photo). The owner said that there was a catch in the new fencing operations: a much greater

area of pasture than he has planted would be required to adequately feed his stock, which were now being excluded from open grazing lands around the village by the wire fencing.

So while the larger livestock are near the carrying capacity, they are not at present contributing to the sustainable livelihood of the resettlers and, on the contrary, are degrading unprotected forage resources. As Cook noted in his earlier report: “There needs to be a clear incentive for farmers to invest time, money and effort in moving from the currently unsustainable system that can only result in widespread land degradation and entrenched poverty among the people.” He noted that there seems to be few prospects for beneficial change, and as for the likelihood of such changes, Cook concluded during his 2014 visit: “I have not seen anything during this mission to alter this view.”



New forage planting for cattle, Sop On

As recommended by Cook, a participatory extension specialist input took place in December 2014 which resulted in “Increasing Income from Cattle Raising” workshops being conducted in all villages (with 80% of participants being female). In these workshops participants set a target for increased income, assessed the current level of income (profit), analysed current practice for strengths and weaknesses, and developed household action plans for changing behavior to increase income. Reportedly as a consequence of these workshops, the uptake of sowing dedicated pastures has increased, along with night feeding, provision of water, and attention to selection of breeding animals.

5.4.2 Disease and Health

In addition to Cook’s views on large livestock currently being an unsustainable component of the livestock pillar, the POE has repeatedly emphasized the risk of epidemic

disease being introduced from the watershed and from Khamkeut and Gnommalath Districts due to previous epidemics there and low vaccination rates.

Already on three occasions the POE has been in locations where haemorrhagic septicemia or unidentified epidemic diseases have devastated buffalo herds. Early in the POE's existence, Nakai Plateau villagers in Old Sop Hia lost most of their buffalo to haemorrhagic septicemia, while several years ago the POE travelled through villages in the catchment's Nam Pheo river basin where large numbers of both buffalo and cattle had died. In February 2014, villagers told the POE that epidemic disease devastated buffalo herds in the PIZ village of Pakatan in Khamkeut District. In spite of higher levels of vaccination than in surrounding areas resettlers' large livestock may well be more at risk because the large majority continue to graze outside larger villages that are situated in what has become a semi-urban environment.

Nevertheless the health status of large livestock appears to be improving. An ongoing, comprehensive vaccination program is now being carried out on the Nakai Plateau by village veterinarians and village extension workers with support of NRO. By early 2015 good progress in vaccinations has been reported with 37 per cent of the large livestock (48 % of the cattle and 20% of the buffalo) vaccinated. Although these figures are low relative to international standards, this vaccination rate is two per cent higher than the current national average.

As noted above, villagers are said to maintain large livestock, primarily buffalo, as "walking savings banks" but not as income producers. However, it appears that there are the significant beginnings of a shift to raise cattle for income. People in several villages reported that they were making this shift. For example, in late 2014 in Ban Done we were told that many villagers increasingly prefer cattle to buffalo. They felt that the cattle were more disease resistant, but significantly, they reported that their cows could expect a calf a year, which, after three years, could be sold for 2.5 to 2.8 million Kip. Buffalo are less prolific producers. Another example is Nakai Tai village where people were shifting rapidly from buffalo to cattle and noting that the cattle provided "a stable income." These are two of the largest villages on the Plateau so the livestock situation in them may be an indicator of trends in other villages also. Alone among the resettler villages, Nong Boua Kham has been setting up livestock raising as a near commercial operation, initially for the army, since before NT2.

5.4.3 Better fodder needed

Most of the buffalo and cattle owned by the resettlers feed on rather sparse grasses and other vegetation, often in the degraded forest areas. They are adapted to this rather rough diet and they show moderate productivity on it. However, if the livestock are to be managed for maximum profit they require substantially more nutritious fodder. To achieve higher rates of productivity they would require well managed pasture development, improvement in livestock feeding practices and better animal husbandry. Better pasture development will require application of fertilizers, probable introduction of more nutritious feed species, and active management of the livestock. Above all, it will require understanding by the villagers of the importance of the livestock development activities. Throughout much of the world farmers are reluctant to spend resources on pasture development for beef (as opposed to dairy) cattle. Such expenditures are totally foreign to most resettlers, and achieving their active cooperation and participation would require a significant educational effort.

The consultant's report on pasture and livestock development sets out an ambitious four part program to attain sustainability based on provision of a productive and stable feed base, control of livestock and development of a commercial approach to livestock production.

As with a switch to intensive farming on the 0.66 plots this will require a whole new approach, new technology and new farming and husbandry practices. If the Nakai Plateau villagers including women are willing to embrace the new techniques livestock production could become a profitable contributor to village incomes. But as noted above, the changes required will involve a shift in mind-set - the greatest challenge, will take time to achieve and will require continued expertise not least on the extension side.

The POE recommends that:

37/24 As part of the CA required Livestock Improvement Program (CA 9.7), a coordinated program of training in achieving enhanced soil fertility and plant nutrition and well supported field work and husbandry improvements be undertaken as part of a sustained effort to lift large animal production to a higher income-earning level over the years ahead. [Binding]

5.5 SUSTAINABILITY OF THE OFF-FARM PILLAR: TOURISM AND TRAINING

5.5.1 The potential of tourism

Tourism is potentially an important and sustainable contribution to resettler livelihoods, as it has proven to be in several other regions across Laos and elsewhere in Khammouane Province itself. However, while there are some encouraging developments substantial work remains to be done before the sector even begins to achieve its potential. NTPC is encouraged to be more proactive as a facilitator.

The opportunities are opening up elsewhere in the country. In Lao PDR as a whole the average annual growth in tourist arrivals between 2010 and 2013 was 25%. International arrivals are growing at 19.8% per annum compared to 31.5% for the domestic market. In 2014 Lao PDR received 4.2 million international tourists who generated \$620 million in foreign exchange from spending on accommodation, food, transport, shopping, entertainment and other services. The main drivers of growth are the recent opening of the third Mekong Friendship Bridge that links Thakhek with Thailand, and strong demand for culture and nature-based tourism.

The resettlement experiences and cultures of the various ethnic groups complement the potential of the NNT-NPA and the WMPA for nature-based tourism. By the time a tourism program gets underway, each hamlet will have developed a unique educational experience to attract tourists to visit within their community boundaries. That experience would be greatly enhanced by GOL's clarification through an Order of the Prime Minister that islands within hamlet boundaries belong to the resettlers to use for agriculture, grazing, tourism and other livelihood activities.

The pillar's potential for growth is substantial. Khammouane Province received about 425,000 tourists in 2014. In recent years increasing numbers of these tourists, currently about 1,000 per month, have come across the Nakai plateau. Many of these are making the loop from Thakhek across the Nakai to Lak Sao, then west to route 8 and returning to Thakhek. Many of these are backpackers and motorcyclists, in part because a section of this route remains rough to traverse by tourist bus. However, this section is scheduled to be sealed by the end of 2015. So while the total numbers of tourists in Khammouane Province has been rising each year, it is anticipated that with a good through road there will be a greatly increased number of tourists coming across the Nakai Plateau in the years immediately ahead, especially from China, Vietnam, Thailand and overseas. However, the reality at present is that tourism is far from contributing to compliance with the CA's off-farm sustainability goal.

If adequate facilities can be provided, the Nakai Plateau, reservoir and watershed could become important and economically productive tourist objectives. With training and preparation the anticipated increased tourism could provide many resettlers with substantial off-farm income. In November 2014, a workshop was held by the district and provincial tourism office, with a French NGO involved in tourism, to explore local interest in tourism and new potential tourism sites. The ADB already has an active tourism program that includes the Nakai District and can provide training as well as other assistance to the development of Nakai tourism. This source of expertise and contacts should be tapped into. If there is agreement between the government bodies and others, including NGOs, a tourist development plan is created, and training is provided for interested villagers, there is a potential for tourism to contribute significantly to the sustainability of resettler off-farm livelihoods in due course.

5.5.2 Training for tourism

There is a pronounced gap in knowledge and know-how about the industry in the villages but a growing interest in its potential. As a Thalang woman put it: “we like the idea of setting up tourist ventures but we do not know where to start.” One idea discussed was that a group of villagers work together to set up local boat trips on the reservoir and up one of the tributaries, arrange guides for bird watching and bush walks, provide a Lao food lunch and return the visitors to the village, perhaps for cultural performances or dinner – or even an overstay. There are some lingering cultural reservations about charging visitors for services which traditionally were a Lao gift to the visitor but the younger resettlers do not have inhibitions about this. With a growing market for nature-based tourism including wildlife viewing, cultural and off the beaten track experiences, the Nakai area and nearby NPA have attractions which will bring in those seeking different adventures.

Some different approaches to training will be called for. Women in the villages were keen to become involved but are reluctant to go outside the immediate area for training. So long as courses were held in, or close to, their home village, and were during school hours they were enthusiastic about the possibilities. Basic training in advertising the availability of ventures, in safety practices – life jackets on boats, for example – food preparation, pricing, and so on will be called for.

The POE recommends that:

38/24 NRO help bring together the various players – local and international NGOs, Tourism Ministry, the ADB specialists, District authorities, VDCs and the private sector – and work more proactively with the ADB and others to explore local interest in tourism development, encourage preparation of a tourism development plan and set up village-level training programs in concert with the ADB. Proposals for tourism training and ventures in the resettlement villages may well emerge from the “bottom up” development approach now being fostered by NTPC. [Binding]

39/24 Resettler control of islands within their hamlet boundaries including use for tourism ventures be clarified by an Order from the Prime Minister’s Office.

5.5.3 Vocational training

Having referred to “a limited increase in the number and relevance of training activities in the off-farm sector” during 2014, POE Report 23 stated that “There are simply not enough resettlers taking such courses.” (POE 2014b). Nor, it seems, are the skills being fully used.

Though the POE commends the growing strength of the Community Living Well Program that now includes “Mobilization of village youth for vocational training ,” that activity did not involve NTPC but was implemented by the Lao Revolutionary Youth Union. As far as may be ascertained, NTPC itself sent 68 persons to Thakhek and Vientiane in 2014 for training in income generation skills. That is a considerable number but for reasons which need analysis only 60% of those trained in the previous year have since applied their newly learned skills. Furthermore, NTPC has only limited funds set aside for vocational training in 2015 and appears to have been little involved in vocational training under the Off-Farm Pillar to date during 2015.

This is most disconcerting at a stage in the project development where vocational training should be being most actively pursued. It is accepted that initiating off-farm activities, notably those demanding entrepreneurial skills, in a new semi-urban environment

is far removed from the traditional way of life of the older generation. Most resettlers have had some personal experience in working in the other four livelihood areas, but vocational training is breaking new ground; which underlines how important well researched and focused training is provided it is in building up the off-farm pillar. Again it seems likely that the new generation of resettlers may have a unique contribution to make.



One of several looms producing handcrafts at Sop On

5.5.4 Training in general

The capacity building at the village level requires further efforts to identify needs and opportunities. Funding is apparently available but a further analysis on the ground is called for. Our general impression about training is that it is most likely to be effective if it is conducted on site and closely linked to employment opportunities. On the first point, as pointed out above in relation to tourism industry training, there is a marked aversion among the resettlers to going well beyond the Plateau for training. The women in particular much prefer tailor made courses, designed for their level of need and the opportunities immediately available to them, conducted in family-friendly hours and preferably in their own or neighbouring villages. That is an administration-intensive system in some ways – bringing the trainers to the learner rather than the reverse - but may be more appropriate at this point than training in distant venues, and may prove less expensive to arrange. NTPC has recruited a Lao woman who seems to have the drive, the motivation, the knowledge, and the personality to make a success of setting up a series of ad hoc village courses across a range of disciplines. With adequate funds assigned to the operation and priority accorded to the work, the training deficit can be made up relatively rapidly. However, as with tourism, training is far from contributing to compliance with the CA's off-farm sustainability goal.

The POE recommends that:

- 40/24 As emphasized by IFI comments on this report, “off-farm training should be closely linked to the village development planning process, taking into account the local and national labor market opportunities and capacities of resettlers.”**
- 41/24 NTPC not only continues to sponsor and fund vocational training under the Off-Farm Pillar, but that additional training be based on a further analysis of needs and opportunities at the village level and on the relationship between past training, income generation and skills use with special emphasis on upskilling female and male resettler youth. [Binding]**
- 42/24 Such training include a substantial program of less formal training, being designed specifically to meet real and immediate needs for upskilling among the resettlers, relevant to and reflecting the opportunities available to them, conducted wherever feasible in the villages themselves and including small loans or grants where required to enable the villagers to equip themselves initially to set up business (treadle sewing machines, weaving looms, sets of motorcycle/outboard motor/vehicle repair tools, lifejackets for boats etc.).**
- 43/24 NTPC accept that a more dynamic approach to off-farm activity training in general is called for in the year or two immediately ahead and to this end set themselves an ambitious target of recruiting for training during the remainder of 2015 to be increased proportionately during 2016 and again during 2017. [Binding]**

6 SUMMARY OF ACHIEVEMENT OF SUSTAINABILITY IN LIVELIHOODS AND RECOMMENDATION ON EXTENSION

6.1 Adequacy of land and other natural resources

As recorded above, the POE's finding is that with equitable resolution of present land conflicts, with official discouragement of illegal and excessive inward migration and effective law enforcement to protect lands, forests and fisheries, and with further distribution of additional agricultural lands there will be sufficient land and other natural resources available to sustain livelihoods for the resettlers and the natural growth households and their successors for the years through to the end of the Concession Period. A review of the present and future land allocation and use system to ensure enhanced equity and to take into account topography, soils and water resources is called for at this point. The above finding assumes that further livelihood development will be fostered within a diversified household production system, that ongoing support through technical assistance from development partners will be maintained and that effective District, village and hamlet-level institutions will be supported and thrive.

6.2 Other factors affecting sustainability

The delays in initiating several of the key social programs has led to a belated achievement of social objectives and sustainability. With the benefit of hindsight it can be seen that the livelihood programs in general should have been started up earlier than in fact happened. There were a variety of reasons for this, not all of NTPC's making – the prolonged delay in getting fundamental programs like soil surveys undertaken can be instanced as largely an NTPC failing but the similar delay in getting the key land allocation (PLUP) Process underway and completed owes more to the innovatory nature of the exercise in the Lao context. Beyond these examples the tardiness in getting Village Development Committees up and running and seriously involved in planning and implementation, still at an experimental stage in most hamlets, and the inadequacies in capacity building in general, held back progress. So did the ongoing problems with building and introducing appropriate irrigation technologies accessible to the average villager, the late provision of fencing materials, delayed provision for the natural growth households and so on.

It has to be said also that the insistence of the Lenders on the inclusion in the CA of ceilings on some program expenditure, while understandable enough, proved in the end to be as damaging as the POE and others had feared. This was particularly so in the cases of the Forestry and Downstream Programs, the withdrawal of NTPC support once the sums laid down in the CA had been expended proving to be highly disruptive, though some flexibility was eventually shown on funding in both cases.

A further factor was the Company's occasional lack of appreciation of the importance of putting people with appropriate background and expertise in strategic positions. The tendency, especially in the first years of the RIP, was to appoint managers with engineering experience to head up the NT2 social programs like fostering livelihood development. Those appointed were well motivated but they were engineers expected to plan and oversee social engineering in a remote part of a developing (and tropical) country – and in a project whose intended beneficiaries were largely from ethnic minorities unused to a sedentary life and occupations. Such appointments amounted to attempting to fit round pegs into square holes.

6.3 Summary of livelihood findings

The list below is not intended to be comprehensive and should be read alongside the sections above on the five pillars, the section below on cross-cutting issues and the attached Table summarizing what remains to be done to achieve RIP closure:

- **The POE finds** at this point in time that the **Fisheries Pillar** is the most successful of the livelihood pillars and that the legal catch is sustainable at the present population and fishing level. Further increase, however, in the current illegal fishing and fish trading could undermine current sustainability.
- **The POE finds** that, by way of contrast, the **Village Forestry Pillar** has failed to produce more than a fraction of the one third of resettlers' income planned, has been maladministered for a decade and heavily overtaxed, has little involvement by the villagers in any element of managing the resource they own, is inadequately supported by GOL agencies, the NTPC and the IFIs, and is thus unsustainable as at present run.
- **The POE finds** that the **Agricultural Pillar**, while experiencing this year an encouraging upward trend in resettler agricultural intensification and production with an expanding use of previously underutilized land allocations and an increasing take up of agroforestry and cassava planting opportunities has yet to reach the point of sustainability in terms of providing the planned level of agricultural intensity, resettler income and household sustenance. The challenge is to sustain the upward trend.
- **The POE finds** that the **Livestock Pillar** has not yet realized its potential as a contributor to household incomes, with current practices in pasture, forage and stock management regarded as unsustainable and much of the Plateau reaching or exceeding its carrying capacity for large livestock while not realizing its capacity to expand the husbanding and sale of small livestock.
- **The POE finds** that the **Off-farm Pillar**, which has boiled down in essence to **tourism development** and to **training/capacity building**, calls for further attention. Thus, the tourism potential of the Nakai Plateau and the associated National Protected Area is considerable particularly in the ecotourism dimension and is expected to evolve fairly rapidly once there is a sealed road from Nakai to Laksao. But at this time it is only slowly evolving and the project's contribution is minor. **The POE also finds** that there is an ongoing but largely unmet requirement for vocational training in a range of areas, notably at the village level, and seeks a further needs analysis.

6.4 Recommendation on extension of the RIP

The sections which follow on cross-cutting issues (Section 7), like providing for the Natural Growth households and ethnic minorities, protecting the vulnerable, addressing gender and women's issues and the handing over of responsibilities for managing the project to Lao agencies are obviously directly related to fostering and maintaining the welfare and socio-economic status of the Resettlers and merit attention and resources accordingly.

The emphasis among the Resettlement Objectives in section 3.1 of Schedule 4 in the CA focuses in particular on the sustainability of livelihoods. The recommendation set out below is therefore primarily but not solely related to this issue and takes into account the

finding that only one of the five livelihood pillars can be said to have achieved the Resettlement Objective of sustainability.

The POE recommends that, taking into account its findings in this report – notably the conclusion that only one of the five livelihood pillars can be said to have attained sustainability and maintained it for a reasonable period of time:

44/24 The Resettlement Implementation Period be extended for two years to December 2017 and, as the CA requires, activities performed in the intervening period be reviewed and reassessed by the POE before the expiry of that period to determine whether the Resettlement Objectives and Resettlement Provisions have been achieved in accordance with the Concession Agreement. [Binding]

6.5 Evaluating conditions for closure

It follows that, if the analysis and advice in this report is accepted, there will need to be a further evaluation of achievements before the review date of the end of 2017. The two key questions will be whether the outcomes for 2017 have been achieved and the recommended actions have been implemented.

A key test is whether, by the end of 2017, development on the plateau will have reached the point where informed observers would agree that it is sustainable. Because this is a prediction at that point about an uncertain future, it will inevitably be a matter of judgement. The POE envisages that this judgement would be made on the basis of a range of evidence:

- **Official statistics and reports:** statistics on land use; production, consumption and incomes related to the specific pillars; QSEM/LSMS and supporting qualitative and statistical analysis; Company and GOL reports on inputs of staff and budget, and on plan achievements);
- **Consultant evaluations:** including as required repeats or updates of the more salient consultant reports on pillar developments and institutional support, LTA and IFI missions, and monitoring reports on specific projects in agriculture, forestry and the other pillars as required;
- **Missions by monitoring agencies** covering:
 - Review of the above reports and evaluations;
 - Discussions with key stakeholders;
 - Meeting with, polling and interviewing villagers;
 - Direct observation of conditions on the Plateau.

None of this agenda is new. The main issue is timing. In order to allow as much time as possible for recommended remedial action to bear fruit in the intervening period, reviews of the RIP achievements by the IFIs and POE should take place in the third quarter of 2017. It will be important to get the sequencing of reporting right and to avoid a repetition of the situation faced this year where the IMA compliance review took place after the POE Mission and a major review of project agriculture was not available before this report of the POE went to the printer. A logical sequence would be for a QSEM/LSMS survey to take place in the first half of 2017 with its analysis produced by May at the latest, followed by an IMA compliance review to report by the end of June, an LTA visit in July and an IFI Review team visiting in September. There would be logic in a brief overlap between the IFI and POE visits, with the latter occurring in October. This assumes that all three major monitoring missions remain in place with mandates and roles roughly akin to their present ones. The

object of the exercise would be to have a decision on RIP closure by November/December 2017.

The POE recommends that

45/24 In accordance with the analysis and recommendation in this report relating to the CA Objectives and Provisions, the further reviews proposed in 2017 include a QSEM/LSMS survey reporting by May 2017, an IMA compliance report available by the end of June, an LTA visit in July and an IFI mission in September, preferably overlapping with a POE mission in early October. A decision on the closure issue would follow in November/December 2017.

7 CROSS-CUTTING ISSUES

7.1 NATURAL GROWTH HOUSEHOLDS

7.1.1 Status and role

Natural Growth Households, as discussed in the CA, refer to households of first generation children who marry after resettlement but before the end of the RIP. In various documents (including some POE reports) they have been referred to as the second generation which is an error since the term ‘Second Generation’ should refer to those who are born after their parents had moved to the resettlement hamlets.

The status and role of natural growth households has been a long-running source of confusion and disagreement between the main stakeholders and the POE. There is now positive progress to report but settling the outstanding issues and recording – and more importantly, actioning – the agreements arrived at remain to be completed. This matter is among the top priorities of the POE, given that it is an equity issue, has implications for livelihood sustainability of all resettlers and has dragged on for too long.

The root of the problem has lain in a fundamental difference of view over how to perceive natural growth households. The Panel, drawing on its global experience of other dam projects, has seen them as one of the project’s greatest assets. We view the contributions of this better educated group, more familiar than their parents with the nature of the national political economy and technological advances in which resettlement has incorporated them, as critical for the implementation of a successful resettlement process.



Housing of natural growth generation, Sop On

7.1.2 Ongoing negotiations

In part because a consultant has undertaken some overdue but helpful research and report writing about natural growth household numbers and situation, GOL, NRO and the POE got together in April and engaged in a dialogue based on realities. The consultant, Lilao Bouapao, produced several 2015 reports detailing the number of households, their ethnicity, their educational status, their assets, their present livelihood activities and so on. On the basis

of this new information the POE met with senior NTPC staff, Bouapao and the Governor and Vice Governor of Nakai District on 27 April to consider proposals advanced by both sides to resolve the problems. The presence of the Governor and his Deputy was vital, since the most difficult matters still faced revolve around the identification and allocation of housing plots and arable land, functions which only the District has the authority to handle and settle.

Thereafter, benefiting from a number of informative studies by consultant Lilao Bouapao, discussions continued between GOL and NTPC. A progress report received in early September shows that the RMU, Nakai District and NTPC have made a major effort not just to identify the number of natural growth households and to survey and collect data on those households in July, 2015, but also to plan and begin the complex and time consuming implementation of the following 12 benefits that GOL, NTPC and the POE had agreed upon in April:

- Ownership of 0.66 Ha & 0.22 Ha plots and room for a household garden
- Access to and preferably ownership of additional land
- A house plot provided and owned by the G2 resettler
- Ready access to electricity
- Ready access to clean water supplies
- Sealed Toilets
- Eligibility for access to a community and farmer assets-seed processing and fertilizer factories, seedling nurseries, and cattle crushes, for example - and services including agricultural and livestock extension services and micro-finance services within the resettlement area
- Eligibility for other livelihood support in relation to livelihood choices made eg. SERF
- Access to reservoir fisheries
- Entitlements to a share of VFDC dividends, and to employment in reforestation and other VFDC programs.
- Access to health centre services
- Eligibility to attend NTPC training courses

A total of 441 natural growth households were agreed upon to receive the above 12 listed benefits.¹⁰

¹⁰ NTPC Response to POE Draft Report 24. Page 6

7.2 STRENGTHENING THE VILLAGE SAVINGS AND CREDIT FUND

The POE recommended in Report 23 that “Having flexible, viable and sustainable VSCFs¹¹ in each village and hamlet is fundamental to strengthening all five livelihood pillars, and should be a high priority.” (POE 2014b)

Since the Funds were set up in 2012 they have become the main source of loans in the resettlement hamlets. Reasons for going into debt vary widely between hamlets but currently the most important is livelihood activities, followed by consumer goods, medical expenses and food.

Borrowing as a source of credit varies widely between hamlets with some tendency for the wealthier hamlets to have higher debt levels and make more use of the Fund. A preliminary report on characteristics of natural growth households concludes that the average second-generation household borrows about as often as other households but borrows less than half the amounts of other households.

The consultant on village micro-finance (Behrle 2015) reported that

- Overall growth in the Funds was at a modest rate; they were yielding a good return for shareholders; the rate of disbursement was still low; and the portfolio at risk rate (a measure of credit delinquency) “was not high for the specific context”;
- Governance and management was poor in some villages; there were some conflicts of interest and difficulties in enforcing loan conditions;
- A custom-built funds management system developed by an NRO Advisor might not survive his departure;
- There were opportunities to improve the return on the Funds’ overall assets, particularly by higher-return financial investments;
- There was limited capacity in the DRDPEO (District Rural Development and Poverty Elimination Office: the local District GOL office designated to assume responsibility for the VDFs in the handover) to provide supervision and support. The consultant advised the creation of Network Support Organization instead and also strongly advised against the establishment of an umbrella Savings and Credit Union “as it will take out the power and responsibilities from the hand of villagers, this can be dangerous.”

A recent report for NTPC on institutional capacity (Gebert 2014) also observed that there was limited capacity in villages to manage funds and noted the low and uneven rate of uptake between hamlets.

NTPC’s response to the LOM addresses the handover arrangements, advising that the NRO, RMU and DRDPEO had agreed to move to a Network Support Organization “consisting of the 16 VDF, that will organize monthly supervision visits to the VDF, report to the district and be externally audited annually”. This proposal is picked up in the Road Map which refers to “Set up of self-governing VDF Network Support Organisation with employment of professional field staff and linking to external support and audit.”

The Road Map states that the Province is promoting a Savings and Credit Union. Along with NTPC, we favour the proposal for retaining the village-based governance of the VDFs. Many micro-credit facilities end up with mass defaults. So far the VDFs have a

¹¹ Subsequently renamed Village Development Funds (VDFs) and placed under new regulations granting them autonomy in governance.

reasonably good default rate, and this seems in part due to the fact that villagers own the Fund and get dividends from it, so they have an interest in its continued viability. The proposal for a Network Support Organisation, with one or two staff to visit each VDF committee regularly to monitor and advise and help resolve problems, seems cost-effective.

The Road Map draft does not respond to the LOM recommendation that the VDF be more accessible to natural growth households, and poor and vulnerable villagers. NTPC reports that “Village Development Fund is accessible by all (resettlers or non resettlers); Vulnerable and elderly can withdraw their share as per request to village committee and after review and agreement of advisory committee)”. The consultant’s view was that

... the low disbursement rate should not be seen as a problem. It simply reflects the abundance of funds, the obviously reasonable cash flow situation in the resettler villages, their respect of the VDF regulations and, probably, also a lack of investment opportunities that would qualify for debt financing. Under no circumstances should people be pushed into debt by officials that do not have an understanding of the villagers’ situation. (Behrle 2015)

This is a reasonable conclusion: finance does not drive real investment: the relationship if anything is the other way around. If villagers are reluctant to go into debt to develop their livelihoods, the answer lies in improving their opportunities and appetite for further investment rather than in artificially stimulating demand on the Funds.

The POE recommends that:

46/24 There be established a self-governing VDF Network Support Organisation with professional field staff, external support and audit.

47/24 In principle, further efforts be made to ensure that the VDF is accessible to all resettlers subject to there being genuine demand for credit based upon opportunities and appetite for further investment.

7.3 ETHNIC MINORITIES ON THE NAKAI PLATEAU

7.3.1 Introduction.

The Concession Agreement pays special attention to the resettlement of ethnic minorities:

The GOL and the Company shall ensure that at all times during the Resettlement Implementation Period, appropriate steps are taken to mitigate against the additional risks to ethnic minority groups...and will ensure that plans addressing the issue of culturally sensitive development of Project Affected People ('Ethnic Minorities Development Plans') are implemented, having due regard to the SDP [Social Development Plan]. In addition to six other actions, ensuring the above requirement will include:

- additional training and options for livelihood development where a lack of understanding of new technology and methods has resulted in poor performance or a return to unsustainable pre-resettlement activities.
- training and support for village facilitators to raise sensitivity to local languages and traditions in order to overcome barriers to full participation by ethnic minorities in the consultation process.

(CA Section 9.1.4 of Schedule 4 Part 1)

To date, except for the Ethnic Minority Development Plan in the 2005 Social Development Plan and with the partial exception of the Ahoe, virtually no "Ethnic Minority Development Plans" have been developed, let alone implemented, nor appropriate GOL and NRO staff training undertaken.

Another serious problem has been that the NT2 LSMS and the derived QSEM monitoring systems were not designed to deal with either ethnic or inter-village distinctions, both of which have been seriously underemphasized.

A major inadequacy of the LSMS reports was to use Lao as one's major language ("mother tongue" in the LSMS) as an indicator of ethnicity. That mistake - only recently corrected in QSEM9B QIII 2014 - seriously under-represented the proportion of ethnic minorities in the resettler population. For example, NTPC's 2005 Social Development Plan calculated the Brue [Brou] (32.7 %), the Tai Bo (31.8%) and the Vietic-speakers (2.9%) as approximately two-thirds of the resettler population (67.4%) in the 2002-03 dry season. Yet as more educated resettlers through time referred to Lao as their mother tongue, the last LSMS report (March 2013) stated that "The three main ethnic groups within the resettler population are the Lao Lum [actually not an ethnic group as such; hence another confusion] (58%), the Thai Bor (19%) and ... the Brou (11%)" with "other ethnic minorities, including the Ahoe" totaling less than 5%.

The POE believes that such a serious confusion between ethnicity, language, and population stereotyping (Lao Lum) has caused significantly less NT2 project emphasis on the welfare of the ethnic minorities who were two thirds of the resettler population at the time of resettlement.

GOL consolidation of the original 22 villages into the current 10 villages has also had an adverse effect on ethnic minorities in at least four villages (in which the four dominant hamlets are controlled by Lao Lum households while the four weaker hamlets - Sop Phene,

Sop Ma, Nong Boua, and Phonsavang - contain less educated and more inexperienced ethnic minorities).

In terms of participation in hamlet and village governance at all levels, minorities are often sidelined or held back by shyness (especially in regard to ethnic minority women), inadequate training and experience. Thus, a recent survey showed that the three most effective hamlet fishery groups are in communities dominated by Lao Lum while three of the five least effective are in ethnic minority villages.

The weakness of the training component of the Off-Farm Livelihood component indirectly has adversely affected the less educated ethnic minorities as has been the inability, for example, of poorer Brou in Phonsavang to take advantage of secondary education either because of inability to finance travel to an existing secondary school or lack of boarding facilities (government or kin-based) in places where Nakai Plateau secondary schools are currently located.

Granted the above major constraints facing ethnic minorities and the delay in addressing them, it will be necessary during the remainder of 2015 to get on with planning and implementing an appropriate (and sustainable after Handing Over) Ethnic Minority Development Program during the remainder of the RIP.

The POE recommends that:

48/24 Henceforth ethnicity be a priority, proportionate to the numerical representation of ethnic minorities (including natural growth households) in villages and hamlets, in selecting resettlers for training in important committees such as the VDC and Land Management Committees, in institutions such as Village Fishery Groups, in irrigation system membership, in activities under the Off-Farm Pillar, and in receiving educational scholarships. [Binding]

49/24 NTPC recruit an appropriately trained and experienced Lao-speaking expert to commence surveying, no later than the end of 2015, the current livelihoods, expectations and problems (including alcohol and drug abuse) of newly married natural growth ethnic minority households in Sop Phene, Sop Ma, Nong Boua, and Phonsavang in order to use the information gained to plan and implement their training for committees, institutions, livelihood pillars and receipt of scholarships as mentioned under the previous recommendation. [Binding]

50/24 The NRO monitoring unit design a more appropriate monitoring system for tracking the welfare of ethnic minority households from the four sample hamlets.

7.3.2 The Vietic-speaking Ahoe

The Concession Agreement paid special attention to the Ahoe in Section 9.1.4 where “Ethnic Minority Development Plans: include “relocation of Vietic or other vulnerable groups into separate administrative village units with clearly demarcated boundaries and rights to resources...”

We set out below, as an introduction for those who may be unaware of the history of POE’s involvement in Ahoe and other Vietic speakers’ issues, some brief excerpts and comments from earlier POE Reports.

2003: POE Report 6 (March 21).

The POE's first major reference to ethnic minorities was in this report where the POE proposed that the Watershed Management Protection Authority (WMPA) Board include "a representative from the Lao Front for National Construction granted the Front's responsibility for carrying out the Government's 1992 Ethnic Minority Policy." Justification for such an appointment was the need to learn about "the economic potentials and comparative advantages of Lao ethnic minority groups" involved in government projects as recommended by Chamberlain in a 2002 report to the ADB. The relevance of that proposal remains just as relevant today granted the relevance of the Vietic speakers' biodiversity and cultural knowledge to a range of development issues.

2004 -2006: POE Report 7 (March 2).

In this report the POE recommended "That Vietic speakers [on the Nakai Plateau] have the option of their own Vietic Village." This recommendation applied especially to Nakai Plateau Ahoe living in Ban Sop Hia, Ban Nam Nian and Ban Nakai Tai. That recommendation was favorably received at least by some high GOL officials but was never implemented. According to the POE's 10th Report (October 30, 2006), "Where the problem lies is in NTPC and GOL's failure to complete the necessary consultation in a timely fashion. Part of the problem lies in NTPC's delayed recruitment of an ethnic adviser."

Because the above situation and further delays were unacceptable, the POE recommended that "the World Bank recruit an ethnic specialist no later than September 2006 to carry out the necessary consultations and to make recommendations based on those consultations as to the siting of a Vietic village on the Nakai Plateau if so desired by Vietic households and procedures for enabling those Vietic households who so desire to return to the NPA."

2007: POE Report 11 (23 February 2007)

In this report the POE recommended "that a permanent all Vietic village be established at a location within their spirit territory acceptable to the concerned Vietic households in [old] Ban Sop Hia. To avoid dam-related flooding, those households should be moved temporarily uphill before the start of the 2007 rainy season. Such temporary resettlement will allow the time necessary for identifying and assessing an acceptable site for a permanent Vietic Village."

"After elaborate consultations, the large majority of Vietic households in Ban Sop Hia have emphasized first, that they want to be resettled within their current spirit territory, second, that they want their own Vietic village, third that temporary or permanent resettlement in either Area 8 or Area 7 on the Nakai Plateau is unacceptable to them, and fourth, that temporary resettlement above their current houses in [old] Sop Hia to avoid dam-related flooding during 2007 is acceptable."

The wording of the Concession Agreement clearly states that the Government and NTPC are obligated to accept the decision of a majority of the Sop Hia Vietic households as outlined above. The Constitution of Lao PDR also is fully supportive of CA requirements. For example, Articles 1, 2, 3, 8 and 22 emphasize the equality of all ethnic groups in the political process and protect their rights to preserve and improve their cultures. More specifically Article 8 prohibits discrimination against any ethnic group that divides the group."

2009: POE Report 15 (30 April).

Ignoring the requests of the Ahoe to be allowed to remain in Old Sop Hia just above the reservoir when filled and in Khamkeut District rather than being resettled with the other

15 hamlets on the Nakai Plateau, the project authorities resettled the spiritual leader and matriarch of the Ahoe, along with 13 other households, in a corner of New Nam Nian overlooking the main road along which the 16 hamlets had been resettled.

The Ahoe matriarch, however, refusing to remain in New Nam Nian, moved back to Old Sop Hia with various relatives to look after her welfare.

2010: POE Report 16 (25 February).

Vietic Issues

“Khamkeut and Nakai District officials, the RMU and NTPC have not provided CA required attention to Vietic communities in spite of the POE, the LTA and the GOL IMA drawing attention to this inadequacy in report after report. In their January 2010 Nakai Resettlement Report, the IMA noted, for example, “that no training in ethnic sensitivity [as required by the CA Schedule 4: 9.1.4] has been provided to the implementing agencies so no supplementary training in this issue is found in the training planned” (Page 82).

2010: POE Report 17 (22 November)

The POE endorses the August 10 Report of the Consultant on Ethnic Minority Support to the Nakai Resettlement Office. Especially important are Recommendations 2a and 2b.

Recommendation 2a states that:

“Ahoe villagers have a spiritual and ancestral connection to the old Sop Hia Site, and they should be permitted to establish a permanent village there; the village should be officially classified as a NNT NPA village, and accordingly NTPC and WMPA should approach the issue of development and livelihoods in this settlement just as they would for any other village in the NNT NPA, where the agreed upon emphasis is on balanced conservation and development.”



Aerial view of Old Sop Hia

To comply with the intent of World Bank Guidelines for such Ethnic Minorities and GOL’s NT2 Resettlement Policy to provide “special measures” for such people,

Recommendation 2a should be implemented to the extent that Ahoe who so wish can maintain a permanent presence at the old Sop Hia Site.

Recommendation 2b states that:

“The WMPA should consider setting up a permanently staffed outpost at the old Sop Hia Site to facilitate patrols and monitoring of the site itself and of the ‘surrounding’ corridor area. This should be used as an opportunity to work closely together with Ahoe villagers, to take advantage of their indigenous knowledge of WMPA activities, and to provide them with relevant employment and training opportunities with WMPA and NTPC.”

7.3.3 POE’s current view

By June 2015 the POE had come full circle on the Ahoe of Old Sop Hia. In our first report (February 7, 1997) we noted that four of what were then 22 resettler villages (which GOL first consolidated into 16 villages and then into 10 villages) requested to be resettled on the north shore of the reservoir; that is, close to what was the pre-resettlement site of Old Sop Hia. At that time we suggested that several gatekeeper villages on the north shore of the reservoir warranted consideration “from a conservation as well as [a] socio-economic standpoint.” Subsequently three of the four villages decided to join the other 18 villages to be resettled on the reservoir’s south shore. The fourth village of Old Sop Hia was inhabited by Ahoe who at the time lived in the Corridor over which the WMPA had jurisdiction. They continued to request remaining at what was their current north shore site.

The June 2015 death in Old Sop Hia of the Ahoe matriarch may have a bearing on whether the large majority of current Old Sop Hia households would still prefer to return to Old Sop Hia or make New Nam Nian their major residence so long as visitation (including over-nighting) rights to Old Sop Hia remain.

The POE recommends that:

51/24 The right of the Ahoe to continue to live at Old Sop Hia be reaffirmed and Ahoe households surveyed as to their current preference for place of permanent residence. [Binding]

52/24 Should the site of Old Sop Hia continue to be the Ahoe’s preference, all Ahoe resettled households who so desire be allowed to return to the current Old Sop Hia site with a WMPA office established there. [Binding]

As mentioned in the section on fisheries, we have recommended the establishment of an office at Old Sop Hia in the section on WMPA.

Such an arrangement, if fully implemented, could be a “win-win” NT2 achievement for three reasons. First, it would provide the WMPA with the first NT2 office to oversee conservation and development issues in Khamkeut District’s portion of the NT2 reservoir. Second, more specifically, it would strengthen the ability of the WMPA to work closely with the resettlers’ Village Fisheries Groups, Reservoir Fisheries Association and Nakai District to manage the reservoir fishery and to patrol the adjacent terrestrial portion and islands of the Corridor. Third, it would restore the Ahoe’s rights under the Concession Agreement and the Lao constitution to maintain their culture as well as to make available to the WMPA and other GOL agencies their indigenous knowledge as it relates to the conservation and development of the Nakai Nam Theun National Biodiversity Conservation Area (NNT-NBCA).

7.4 VULNERABLE HOUSEHOLDS

The CA emphasizes in several places that the vulnerable receive special attention along with ethnic minorities and gender issues. Hence under 3 General Obligations of the Parties, the parties agree under 3.1.(f) to “apply special measures as required towards ethnic minorities and vulnerable persons...” and under 3.2, that deals with implementing the Resettlement Provisions, “(1) special consideration will be given to gender issues, vulnerable households and ethnic minorities during detailed planning, design and implementation of the social plans.”

The major weakness of current documents is that they do not adequately recognize that who the vulnerable are, and hence their number, can change through time throughout the resettlement implementation process. Yet in April 2015 the number of vulnerable people had changed little over the years (26 households in 20 families in 11 hamlets which is a suspiciously small number). Initially emphasis was correctly placed on the elderly, households with insufficient labor including incapacity of one or more adult members or female headed households of widows or divorced elderly women. As the resettlement process proceeds, however, a wider variety of households can be expected to meet Nakai District government criteria for being vulnerable in addition to those mentioned in Annexure 2 of the 2015 Social Safety Net. Examples would include less educated and experienced ethnic minorities as in Phonsavang, other previously isolated villages, and natural growth households that have yet to receive arable land and/or other resettlement entitlements.

This situation presents both an identification problem, the solution of which requires adequate monitoring and adaptive management, and a budgetary problem in terms of district funds for a larger number of vulnerable households. There is also a nomenclature problem in NTPC documents where the vulnerable are separated from “lagging” households (see April POE briefing under Social Monitoring which identifies “28 lagging hhs from three hamlets”) and “high risk” households mentioned under the CLWP briefing.

Neither the NTPC 2015 Annual Implementation Plan nor the NRO 22 April briefing for the 18 April – 9 May 2015 POE visit deal adequately with the dynamics involved in “the vulnerable” issue. The same is true with NTPC’s 2015 Social Safety Net report. According to the AIP, formulation of a new safety net support system for the vulnerable had been handed over to the district Social Welfare Office for preparing a new kinship system approach to be tested during 2015. Though a new Social Safety Net report had been drafted during 2015, such testing was not mentioned in the April 2015 briefing for the POE. Rather the Community Living Well Program (CLWP) was implementing more restricted special health and educational programs for the vulnerable as well as voluntary programs for village youth and elders to provide physical help and counseling for 152 “high risk” households between May 2014 and February 2015. Just recently the POE has learned that NTPC has a new “special program for lagging households.” Provided that the emergence of such households are identified and carefully monitored as possible vulnerable households, the new program could play a major role in formulating and dealing with a more realistic definition of vulnerable individuals and households now and in the future.

The POE recommends that:

53/24 GOL’s Social & Welfare Department with the assistance of NRO and RMU, develop by the end of the first quarter in 2016 a more expansive definition of vulnerable households and monitor high risk ethnic minority and lagging households that meet current agreed upon criteria of assistance in cash and/or kind (including possible hamlet kinship support).

54/24 Special attention be given to natural growth households and to the poorer hamlets on the assumption that they may include a greater proportion of vulnerable households. [Binding]

7.5 IMPLEMENTING THE CA PROVISIONS ON GENDER

The CA (CI 9.1.5) requires that the “GOL and the Company shall ensure that at all times during the Resettlement Implementation Period, the gender resettlement strategy (“GRS”) and specific gender strategy plans are implemented.” (GOL and NTPC 2005). The CA Clause lists 22 targets for a gender strategy. They are mostly process objectives and few include explicit outcomes for improving women’s lives. We have focused here on targets which go to women’s relative authority in the governance and planning of their hamlets and villages and on their empowerment in the household.

In the LOM the POE observes that “During the RIP there has been only limited professional assessment of the implementation on the ground of the CA's comprehensive gender policy provisions” and recommends “Implementation of the resettlement gender strategy and of how specific gender strategy plans are assessed, as now agreed, by a NTPC appointed gender specialist”. NTPC reports that the assessment has been completed and work is “ongoing with follow up of recommendations of gender expert” and “POE to monitor”.

7.5.1 Assessment of strategy

An assessment of the gender strategy was completed for NTPC in mid-2014 (Esser 2014). Some comments on the findings follow. The overall assessment gives a reasonably favourable view of progress, but a more nuanced view of the findings suggests that village women still have some distance to travel to play their full part in development decision-making.

The picture on gender balance in institutions is mixed. The report finds that most Gender Balance Targets have been achieved but it appears that women still lag a long way behind in influence in formal decision-making and positions of leadership. Women are a small minority on most Village Authorities. They are 36% of the membership of the Village Development Committees but men chair all the Committees. There are big improvements in gender balance in the NRO but virtually no senior female staff.

The Road Map draft sets the objective to “improve gender balance and empowerment of women at all levels (district and villages)”. The focus is through the Community Living Well Program. Issues are “[l]imited understanding and ownership of concerned district authorities, entrenched traditional gender inequalities, limited education levels.” The draft also reports a divergence of views on “Gender quotas vs qualified influence in decision-making.” Translated, this reflects our concern that, while the numbers may have improved somewhat, the opportunities for leadership have lagged behind.

In the household economy, it appears that there have been some significant improvements in women’s lives, particularly in significant reductions in women's workloads due to improvements in infrastructure and household assets. Overall however it is not clear that women have improved their relative position significantly in terms of control over resources. Men remain in charge of the main resource-winning activities for the family, as is clear from the different patterns of activities reported in the QSEM. In some respects, resettlement may have actually reduced women’s access to natural resources, particularly in the reduced opportunities for gathering NTFPs.

It is not clear either that resettlement planning has yet made much difference to the economic empowerment of women within the household. Although off-farm training has been provided to help women expand their opportunities for new sources of income this has rarely been translated into successful new businesses for women. That is why, elsewhere in

this report, we have recommended tailoring training opportunities more specifically to the needs and wishes of women, and proposed further measures in small livestock, fish processing and irrigation. It may also be that women are reluctant to borrow to make the initial investment in business opportunities, which calls for attention in the management of the VDFs. This sort of issue calls for further monitoring by trained professionals.

7.5.2 Hearing the voice

A recurrent theme of our mission has been observation of whether women's voices are properly heard in the villages. In some meetings several women were outspoken and vigorous contributors to the discussion, not least older women. In others, only one woman would speak or sometimes none, although women usually outnumbered men in their attendance at the meetings. Partly this may be a general reticence about speaking in front of outsiders but it may also reflect a reluctance to challenge men directly in public meetings. It is certainly clear from our less formal conversations with women that they are sharp and perceptive about livelihoods and social conditions in their villages. Provided they can feel it is safe to contribute, they often have perspectives which are very different from male authority figures.

As foreigners and male, the Panel members could not claim to fully understand Lao women's perspectives or situation. But it seems clear to us from the contacts we do have, and the many reports we receive from Lao women, that there is still a long way to go before women of the Plateau are enabled to play a full part in the governance and planning of their villages. Simply getting more women onto village committees may not change this situation, given that it is the result of longstanding values and beliefs in village society. But continuing to increase women's representation will give more women experience of participation in village decision-making and, with the support and encouragement of the Lao Women's Front and other organisations, may eventually increase their role in village leadership.

The POE accepts that, based on the partial progress in achievement of Gender Balance Targets in the CA, implementing a gender strategy and plans, there has been substantially improved compliance with the specific requirements of the CA on gender. It however endorses further efforts to increase the proportion of women in village governance and believes that there should be a greater focus specifically on preparing women for leadership positions in villages.

The POE recommends that:

- 55/24 Support for women from outside organisations like the Lao Women's Front focus on preparing them for positions of leadership in the hamlets and villages.**
- 56/24 As discussed elsewhere in this report, livelihood programs pay special attention to the specific income needs, wishes and talents of women.**

8 HANDING OVER

8.1 Introduction

One of the most important components of the resettlement process, and one of the least successfully completed world-wide, is the handing over of control from the project authority to government and resettler institutions. At this point in time, NT2 risks joining that large majority of global projects where handing over fails because GOL has not provided the necessary budget and GOL and the resettlement hamlets have yet to have sufficient capacity to maintain whatever institutional and livelihood development has occurred. **The POE considers that, in the context of a proposed formal release of the Company from its responsibilities, there has to be stronger evidence that the District authorities and the ten resettler villages are equipped and ready to embark on this handover process.**

The situation is unsatisfactory for two major reasons. First, because the budget and capacity of district governments are so low that they have to rely on poorly paid volunteers to carry out even routine tasks, let alone the more complex tasks as required for the community resettlement process. No one is more aware of, or concerned by, this reality than the District managers themselves. To be successful the hand over would require a GOL commitment over the next two to three years at least.

Secondly, to date the government has not carried out its undertakings to the IFIs whereby various NT2 revenues “are to be used to finance eligible projects or GOL obligations related to the Project”¹². Granted the close linkage between the Nakai District government and the 10 resettler administrative villages in completing the handing over process, continued failure of the government to carry out its responsibilities will require NTPC and the IFIs not just to extend significantly the length of the RIP, but also to increase significantly their own involvement, staffing and budgets included, in order to further improve resettler institutional capacity to manage their affairs as required by the CA.

The need for increased NTPC and IFI involvement in the Nakai handing over process warrants special emphasis at this point. The additional funds now to be available to NTPC will help fund capacity building at both the District and Village level. An IFI input into strengthening District agencies will certainly be called for as well.

8.2 District staffing and capabilities

There is a major problem looming for the project as a whole if the District budget monies, not yet approved, are not forthcoming. It is not exaggerating the situation to state that without these resources the District will not be able to carry out adequately its new responsibilities. District management itself is apprehensive about the outcome. The problem is particularly acute in key sectors like fisheries and agriculture. DAFO does not have a single fisheries expert on its staff even at this stage. Its extension service, a fundamental requirement at this point in such a project, is staffed by underpaid volunteers with very little field experience, yet their role in convincing farmers to adapt to new circumstances and demands is crucial.

The POE is aware of the country’s overstretched budgetary situation. Indeed it is a contributory factor to the Panel’s decision to recommend an extension of the RIP. Our thinking is that if the worst comes to the worst and the GOL is unable to fund the full cost of the Handover then, subject to the views of the GOL itself and the approval of the NTPC, an

¹² NT2 Joint Mission, IFI Aide Memoire November 10-21, 2014. Page 2. POE underlining.

arrangement along the lines of the existing one whereby the GOL staff are co-located with their NTPC counterparts, continue to work with them closely and are paid from NTPC resources may be acceptable as an interim measure until the GOL is in a position to meet its obligations. The POE does not wish to propose this temporary solution but would be prepared to go along with it on an interim basis.

The NRO, together with the Resettlement Management Unit and the District Working Group (DWG), have put much time and effort into supporting both local government institutions and new villagers' institutions as well as the five pillars. Nonetheless, despite measurable accomplishments, a recent institutional assessment concludes that "these institutions will still require intensive capacity building at least through 2015, and then for another two to three years beyond this to ensure greater sustainability of resettler livelihoods." (Gebert 2014).

District officials are expected to begin to take over a number of responsibilities where the NRO currently plays a large role: directly on support for livelihood development and more generally with support for the community development model envisaged for the resettler villages. Nevertheless, the blunt conclusion of the institutional assessment is that at present the "gap between what the District can do with, and without, NRO support is very large, indeed." If this handover was to get underway at the end of 2015, preparations to close the gap should have been well underway by now. A step has been taken in the right direction with the co-location of NRO and District officials, hopefully working in counterpart roles. But we have received no comfort from either District or NTPC that they will be equipped to start a handover by the end of this year. The risks to a successful handover remain great.

If the Nakai District is to take over responsibility from the NRO, it will require both more and better-trained staff. In 2014 the POE wrote, "Adequate ongoing funds and trained staff [must be] allocated by GOL and NTPC to livelihood, institution and capacity building programs to ensure their viability into 2015 and throughout the handover period and beyond" and there must be a "systematic program of formal and informal upgrading courses and, where required, recruitment of additional staff, during the balance of 2014 and into 2015" (POE 2014a: Annex 1: 14-15).

The District is approaching the GOL for a special quota of additional staff but with little prospect of success. The GOL has made it clear that there is unlikely to be any increase in the number of staff in key District roles such as extension work, community development or community asset maintenance. District operating budgets also remain almost derisively small, again with little chance of being increased. The draft Road Map says also that capacity building remains a major challenge, referring to "Lack of motivation", "Lack of adequate staff" and "Lack of skills."

The POE will continue to argue for increased funding and staffing for the District. But the broad conclusion is that the District will be not be ready to assume full responsibility for many of the functions now performed by the RMO for several years yet. Gebert's conclusion can be endorsed:

NRO/NTPC – with the active support of RMU – will need to work out a longer handover period with the District that includes an intensive phase of support until the end of 2015, followed by at least two to three years of a transitional phase in which necessary processes are handed over to the District. (Gebert 2014:9).

8.3 The village and hamlet situation

The implied expected outcome is that villagers are able to work together effectively for the development of their hamlet. Villagers should have contributed to a Village Development Plan, understand the activities it includes and agree with its priorities and that its activities are making a valuable contribution to their well-being and to the village as a whole.

Similarly with the District situation, VDCs are being asked too soon to lead a complex structure of village committees in all development activities and need intensive support to perform their roles. Although NTPC believes that “VDCs [are] working well [although] some need to be more representative on gender and minorities,” Gebert was less optimistic than NTPC that the VDCs would be able to take a leadership role in village development without “significant follow-up efforts”. The VDPs for 2016-20 were based on one-day meetings between District staff and VDC members (and a few others) in administrative villages. At our meetings in villages, some villagers were not clear that there was a plan in place for 2016-2020.

The resultant VDP has been described as a “21.7 billion kip wish list” of specific requests on the District – which is most unlikely anyway to be fully funded by the GOL. The process of developing it certainly does not seem firmly based on a detailed discussion among villagers themselves, with representation of all groups, of how they would best like to use their land and other resources to support their preferred mix of livelihoods.



Village Development Committee and POE, Phonsavang

NTPC’s Road Map does not directly address the findings in Gebert 2014 but implicitly assumes that future village planning will require a lot of external support. The Road Map proposes setting up a District program implementation committee and hiring an expert program manager, with donor support, and strengthening the capacity of District staff and of the VDCs themselves to manage implementation. In practice, this proposal suggests that village planning will continue to be driven from outside the villages themselves which would be undesirable, even if the District had the capacity after handing over, because ultimately the villagers need to be responsible for managing their own affairs.

8.4 How coherent a structure?

The plans for livelihood development, maintenance of common assets and management of common property resources have consistently assumed a model of development based on village self-government built around a number of specific groups – particularly on fishing, forestry, water use and micro-finance – under the overall leadership of the VDC. As a result, village governance seems to the outsider to be a complex structure of interlocking committees and groups including the Village Authority, the VDC and its sub-committees, and specific functional groups including the VDF and LMC, together with local representatives of the Party and mass organizations such as the Lao Women’s Union and Lao Youth Front. We were assured by Lao officials that it is a coherent structure and that everybody understands their roles in it. That seems unlikely to the POE given how short a time the system has been in place. We suspect that its effectiveness will depend on strong leadership from the VDC and that this leadership in turn will require ongoing support from the appropriate District departments. For planning matters, this is the DRDPEO, which at present is severely understaffed and underfunded.

The POE recommends that:

57/24 GOL make available substantial additional funds for implementing the government’s management, capacity building and wider support requirements during the NT2 Handing Over Process. [Binding]

58/24 NTPC and the IFIs maintain their support roles in helping strengthen the ability of the villagers to manage their own affairs. [Binding]

8.5 Strengthening the Resettlement Management Unit (RMU)

Under CA Article 6: Implementation, the Resettlement Committee “will instruct the Resettlement Management Unit.” (6.1). GOL through the RMU “shall be responsible for: (i) coordinating the planning and implementation of the resettlement process jointly with the RO [NTPC Resettlement Office]; (ii) jointly with the RO, the day to day management of the Resettlement Process in accordance with the general policies and specific directions of the Resettlement Committee; ... (v) managing the designated GOL implementation budget for the Resettlement Process; (vi) obtaining and allocating operational budgets to the DWGs, and through them to Project Affected Persons”; as well as carrying out 13 other important tasks.

In recent years the RMU has been unable, first at the expense of Xe Bang Fai Downstream Program project affected people and now at the expense of Nakai resettlers as well, to carry out the above critical functions because of receiving delayed and inadequate annual budgets and support from the Central Government. This is an issue which the POE has continued, without success, to bring to the attention of the Central Government as well as to the Khammouane Provincial Government.

Hence in the POE’s 2011 report, the first item on handing over dealt with strengthening “both the coordination and budgeting role of the Resettlement Management Unit.” (POE 2011: Part B, Section 2.3.1). Inadequate RMU funding was again emphasized in Report 22 quoting a section of the draft LOM that stated under “Issues: Where CA requires the setting up of institutions like the RMU, adequate funding to carry out their RIP responsibilities is essential.” (POE 2014a:23).

In sum, the CA expects the RMU to be the main GOL institution working with the RO and the Nakai resettlers to ensure that stakeholders plan and implement a sustainable Nakai resettlement process during the RIP. For this requirement to occur, the POE is not recommending that the RMU be fully reconstituted as in the past. Rather that its staff be

restricted to a relatively small number of personnel whose skills are relevant to the completion of the RIP and to the Handing Over Process. Hence it is essential that GOL at Central, Provincial and District levels give RMU Manager Sivixay full support to work closely on a full time basis with the NTPC Environment and Social Manager throughout the RIP.

Furthermore, as was expected in the case of the XBF Downstream Program (but not implemented because of inadequate GOL support and budget), the RMU should continue to be the main GOL coordinating agency throughout the handing over process to Nakai District. Since the handing over process will continue beyond the end of the RIP, so too should the RMU continue to be the key GOL agent providing budgetary support to the Nakai District Office (especially weak sections of DAFO and the DWG) and to key aspects of resettler training such as irrigation WUAs under the agriculture pillar and Village Land Management Committees.

The POE recommends that:

59/24 The RMU be reconstituted as a functional organization with the necessary staff and budget to carry out during the remainder of the RIP, and during the Handing Over process, the most important functions listed under Article 6.1. [Binding]

60/24 Full time staff include, in addition to irrigation specialists, specialists who can work with improving District and Village Land Management Committees, and such additional staff as recommended during RMU meetings with the Nakai District Governor and the NTPC E and S manager.

61/24 The RMU's functions continue throughout the Handing Over Process at the end of which the RMU will be disbanded.

8.6 NRO staffing and budgeting

Because of the critical importance of staff continuity, the POE was concerned to read in the 2015 AIP that nine NRO officers had resigned during 2014 including two agricultural officers as well as one fisheries and two livestock officers. Though all had been replaced, it is not so easy to replace the experience of those who resigned. The POE suspects that one reason for resignations was the expectation of at least some staff that the RIP would end by December 2015. In that case, future staff continuity may remain a serious problem.

The POE recommends that:

62/24 NTPC pay special attention in the future to developing conditions of service, such as contracts extending to the end of an extended RIP and bonuses for completing such contracts, that will help in reducing the problem of staff turnover.

63/24 NTPC provide sufficient budget, trained extension staff and consultancy services to ensure that resettler productivity and use of available land and water resources can continue to increase on an annual basis until and beyond the end of the RIP. [Binding]

9 SUMMARY OF IMPLEMENTATION OF CA OBJECTIVES AND PROVISIONS

9.1 Advice in previous POE Reports

The summary of achievement of sustainability in livelihoods (section 6 above) is incomplete in that it does not cover CA Objectives other than livelihood promotion nor the accompanying CA Provisions. Since reviewing these measures is also important in the present assessment we summarize implementation of the latter requirements here. Reference should again be made to the annexed quotes from relevant clauses of the CA document and to fuller details in the body of this report, including the section on cross-cutting issues.

The POE should explain that it does not intend to traverse ground already covered extensively in its earlier reports. Other reports have adjudged that the Provisions covering the setting up of Regional and Resettlers' Health Programs have been met in full, the Programs having been an outstanding success and models of their kind. The company has also supported, for example, the PLUP process by which the initial allocation of land to resettlers was accomplished. There is no case for revisiting such elements of the project at this stage though this report does suggest that a further look at the land allocation process – taking greater account of soils and topography, for example - may be merited in the case of additional lands now being distributed to both the original resettlers and the natural growth households. Similarly, the POE retains reservations about aspects of the Downstream Program outcomes and will address these further in later reports.

9.2 Summarised findings

These clarifications made, we summarize our findings and conclusions on some major remaining CA Objectives and Provisions as follows:

- **The POE accepts** that the **Household and Village Income Targets** in the CA have been met though with more enthusiasm for the latter. The Panel has serious reservations about the methodology employed in the calculations, the use of consumption rather than reported income in the survey and the legality and sustainability of some income-generating activities.
- **The POE accepts** that the standard of work on the many **infrastructure requirements** in the CA has been generally of a high standard, notably in housing. There remain relatively minor problems in ensuring the durability of project roading in the wet season and consistent water supplies in the villages and a more substantial problem in completing the irrigation systems for dry season cultivation and ensuring that the resettlers make use of this new technology.
- **The POE is of the view** that a variety of reasons have contributed to a failure on the part of NT2 stakeholders to fully apply CA requirements to the **advancement and equitable treatment of ethnic minority resettlers**, including the effect of the GoL's village consolidation policy, NTPC's lack of expertise in addressing the sensitive social problems involved in such work and the deficiencies of the project's training and capacity building components aimed at ethnic minorities.
- **The POE recognizes** that NTPC has accomplished useful work in giving **the vulnerable** special attention and help over the years, as required by the CA. There remain, however, identification, monitoring and budgetary problems at the District level and these need addressing given the prospect that the numbers of vulnerable are likely to rise in the years ahead.
- **The POE is encouraged** by the progress made in recent months in seeking solutions to the long running debate over which CA benefits the **natural growth**

households are entitled to receive. The high level of agreement attained is gratifying but identifying and distributing fairly the land for agriculture and house plots is a demanding task, as is determining the total number of households legitimately to be included in the process. Translating the agreements at an early point into action on the ground is a priority issue for the POE.

- **The POE supports** the reasonably favorable assessment of the NTPC consultant in 2014 on implementation of the resettlement **gender strategy and plans** but agrees that women still lag a long way behind in being in a position to influence formal decision-making and to exercise leadership in the villages. This report also suggests ways in which women would be enabled to play a wider role in both governance and the economic activities of the resettlement villages and their households.
- **The POE acknowledges** that “**traditional organizational structures, religious beliefs and resource use**” have been largely recognized and respected by the stakeholders and where there has been a need to move or replace structures this has been done with sensitivity.
- It is not so apparent that “**utilizing local knowledge in developing production systems** that suit the Resettlers’ needs and environment and which results in a self-sustained livelihood” has been followed. The prolonged delay in setting up viable village institutions including the VDCs has meant that the opportunity for substantive villager input into the development planning cycles has been negligible until the past two years or so. The planning processes are still only at a rudimentary stage. This has been a contributory factor to the POE’s recommendation to extend the RIP. The VDCs must be fully involved in MTDP planning and implementation.
- **The POE’s finding** – backed up strongly by NTPC’s own authoritative consultant - is that the **handing over process**, a key part of a development project like NT2, is quite inadequately prepared at this stage. It is clear that the District authorities have neither the human nor financial resources to handle the responsibilities which will devolve upon them when the RIP is declared closed and the villages and hamlets are, like the District management, apprehensive about a premature handing over process. They are not equipped nor ready to take this next and decisive step.
- **The POE is of the view** that to be running down the funding and staffing of the key GoL Unit – **the Resettlement Management Unit** – at this time is an unwise and untimely move. The CA accords this Unit a special place in the resettlement and handing over process. It needs reconstitution as a functional outfit with the necessary staff and budget to carry on for the remainder of the RIP and beyond into the handing over phase.

9.3 Conclusion on extension of RIP

The POE’s conclusion is that the several key aspects of the CA’s Objectives and Provisions which have been found wanting in the summary above underline the conclusions reached in regard to achievement of the CA’s requirements relating to livelihood sustainability, notably that the project and the resettlers would benefit from an extension of the RIP by a further two years. Reference should be made to Sections 6.4 and 6.5 above, together with their recommendations, for a spelling out of the extension case and what follows thereafter. There are serious deficiencies in implementation thus far of other key Objectives and Provisions like advancement of ethnic minorities, providing project benefits

especially land to the natural growth households and not least the substantial further strengthening of District and village institutions and the reconstitution of the RMU. Many of these exercises cannot be brought to anywhere near completion in the next three months, for they are time and resource intensive activities. A further two years of work is required before closure of the RIP can realistically be contemplated.

10 IMPLICATIONS FOR PLANNING, FUNDING, TIMING AND MONITORING

Clearly the implications of the above conclusions and recommendations are substantial. All parties are involved in an extension of the RIP; in a change of approach to fostering development; in detailed planning stretching over two decades; and in the extension of additional funding for the project until the end of the Concession Period. All of these changes will call for hard decision-making, adaptive management, and much political will on the part of the main parties to the CA.

There will also be a need for careful planning of how to present to the public the significance of the extension of the RIP and the maintenance of funding. Certainly most aspects of the new departures are good news and should be portrayed and seen as such.

At the same time it should be recognized that these several and parallel actions are also a recognition of reality. Whether or not the RIP was to be ended on 1 January 2016, the situation on the Plateau will not change. Thus, for example, the challenges of making a living on thin and infertile soils and on slopes, largely distant from accessible water sources, are many and demand considerable adaptations of customary agricultural techniques and the acceptance of new technologies and new attitudes by the resettlers.

The associated challenge of the District, village and hamlet institutions being able to handle the handover of big responsibilities with quite inadequate resources will remain. None of this situation will change overnight if there were to be a change of status of the RIP. The present unsustainability of four of the five pillars would still be there and hence, in the firm view of the POE and others, the CA procedures for extension of the RIP will come into play and the RIP should be extended for two years.

This is supported implicitly at least by the main parties involved. There is a consensus among stakeholders that much more needs to be done to complete the resettlement tasks set out in the CA. Thus, the draft Road Map, supported by all parties, records that only a third of the forty or so resettlement activities yet to be completed are expected to be so completed by the end of 2016 and many of the other planned activities will not be completed until several years beyond that. Under the CA they must be not only achieved but “maintained for a reasonable period of time” afterwards. (See CA Sched.4, Part 1, para.5.3 (b)).

10.1 New procedures and mechanisms

It must also be said that making up the leeway in the struggle towards sustainability of the livelihood pillars is now being addressed – with the exception, as already underlined, of the village forestry sector. The planning procedures, the mechanisms for plan implementation – the NT2 Development Fund (NT2DF), and the Medium Term Development Program (MTDP), as far as it goes - and the undertakings regarding new approaches to development and long-term funding are currently being thought out.

Subject to adequate provision being made for enhanced representation of villagers at all levels of decision-making and administration - and adequate representation of women at all levels - the Panel is impressed with much of the substance of the proposals in the draft MTDP. There is an urgent need to involve not only the resettlers but the other stakeholders, notably the IFIS, in this fundamentally important planning process. The POE largely supports the contents and direction of the MTDP as far as it goes but awaits an update and further development by an expanded group of stakeholders. The Panel would question, as it did at the Working Group, the need for three draft plans at this juncture – the LOM, the Road Map and the MTDP. The first two are essentially an amalgam already and should be merged into

the MTDP. Incorporation of annual updates and five year reviews to coincide with the national planning cycle would presumably be involved.

10.2 Inadequate District budget and the NT2DF

The POE does have a comment or two on the workings and scope of the NT2DF. First, we have had the opportunity to comment on the need for village level representation – beyond Naibans – at the decision-making level in the new Fund’s structure. Beyond this institutional aspect there is, as set out in the Handover section above, a major financial problem looming for the project as a whole if the District budget monies, not yet approved and apparently unlikely to be, are not forthcoming.

It is not exaggerating the situation to state that without these resources the District will not be able to carry out adequately its new responsibilities. No one is more aware of this probability than the District management itself. They are apprehensive about the outcome. The problem is particularly acute in key sectors like fisheries and agriculture. DAFO does not have a single fisheries expert on its staff even at this stage. Its extension service, a fundamental requirement at this point in such a project, is staffed by underpaid volunteers with very little field experience, yet their role in convincing farmers to adapt to new circumstances and demands is crucial.

The POE is not unaware of the country’s overstretched budgetary situation. Indeed, it is a contributory factor to the Panel’s decision to recommend an extension of the RIP. What if GoL is unable to fund the full cost of the Handover? Then an arrangement along the lines of the existing one whereby GoL staff are co-located with their NTPC counterparts, and continue to work with them closely, may be acceptable as an interim measure until the GoL is in a position to meet its obligations. Obviously adequate NTPC staff would have to be maintained and paid by the Company in the meantime, perhaps from NT2DF resources.

The POE does not wish to formally propose this temporary solution but would be prepared to go along with it on an interim basis. It would also serve the utilitarian purpose of not losing trained Lao NTPC staff from the project and might well provide a device for their long-term retention by the GoL itself, again a desirable outcome.

On a wider level the Panel is proposing that the scope of the NT2 Development Fund not to be made too restrictive in general about what it can finance and how it can operate. With a planned life over two decades the Fund will face an evolving set of needs, not all of which may be foreseen at this stage.

The POE recommends that:

64/24 The new NT2 Development Fund’s terms of reference and scope generally not be made too inflexible, at least in the initial years of its existence, and that it not be precluded, for example, from funding initially the provision of counterpart workers on the GoL side should that prove necessary.

10.3 Getting the right people in place

The POE has welcomed the new thinking about how to further stimulate local initiatives and new ventures in the villages and hamlets – the so-called bottom up approach. We see this as an essential approach which may prove a more effective way of identifying new thinking and new talent in the villages. We would, on the basis of experience elsewhere, make the case for very careful recruitment of the people who are to manage this process. The same consideration applies also to recruiting those who will help train the villagers in the range of administrative and management skills to actively manage a truly community-based village forestry input.

It is not often effective in such cases to recruit people who are competent in their own fields but have had no experience of working in small and remote hamlets like those on the Nakai Plateau. Those who have made the adjustment to village conditions, and have some understanding of village attitudes toward development tasks, can be doubly effective compared with those without this level of understanding. To give one example, there are some highly experienced and well-adjusted people working on communal forestry projects in Vietnam. It would be worthwhile turning to them for sources of expertise in this work rather than bringing in foresters from developed countries with little overseas background to help introduce Nakai villagers to communal forest management.

The POE recommends that:

65/24 In implementing the new “bottom-up” approach to stimulating new ventures and initiatives in the villages on the Plateau the NTPC pay special attention to recruiting advisors who are experienced in fostering development in small and remote rural villages, are prepared to live and work in the villages, and understand how to help motivate and build self-reliance among the resettlers.

10.4 Review of monitoring

The final point to be made is that monitoring of the project in the years ahead calls for the maintenance, indeed the upgrading, of the overall monitoring operation. It is not inaccurate to say that with better quantitative and qualitative monitoring in place years earlier than was the case, the socio-economic side of the project would have progressed faster and more surely. The POE has made the point before that effective monitoring is a major adaptive management tool on a complex multipurpose development project like NT2. It took too long to put an improved system in place – and its utility has often been ignored by the major parties. This year alone, for example, it would have been extremely useful to have had an LSMS survey undertaken in order to further inform, and help track progress, in a key period of the project’s life. There has in addition arguably been too much monitoring of the project by too many agencies. That has often diverted time and energy from implementation. So some streamlining is called for. The monitoring process also needs further strengthening and enhanced relevance to the needs of management and the villagers themselves. We cannot recall having seen in seventeen years a Lao language version of monitoring reports in the hands of a villager. So the reports are not getting to people who need to see them. These deficiencies need correcting.

The POE recommends that, in addition to the Household and Village monitoring recommendations:

66/24 At this stage in the evolution of the NT2 project, a review of the level and relevance of all monitoring work on the project be undertaken by stakeholders, covering all agencies involved, including the IFIs, the POE, the LTA and the GoL IMA.

11 WATERSHED MANAGEMENT AND PROTECTION AUTHORITY

As the POE and others have repeatedly emphasized, the successful management and protection of the biological and social diversity of the Nakai-Nam Theun Watershed area and National Protected Area is essential to the success of the NT2 Project as a whole. As such it is critical to the sustainability of the livelihoods of the resettlers. To assure the success of this endeavor the Watershed Management and Protection Authority (WMPA) was created in an attempt to set up an innovative conservation organization that would have a special status within the GoL and would serve as a model.

Unfortunately it was staffed and managed as a normal GoL agency and has not achieved its special status or success. Because of the extremely serious problems with WMPA (see POE Report 22) GoL created a Task Force to restructure the organization. The POE has met with the Secretariat of the Task Force both on its 23rd mission in 2014 and the present mission in 2015.



Fires on the Nam On inside the WMPA

11.1 Critical tasks

A critical initial task of the Task Force is to clearly define a new role and functions for the WMPA, because these will determine what capabilities and positions will be required for the restructured staff. The Secretariat must then develop new terms of reference for all staff accordingly. The initial work of the Secretariat includes advertising and selecting candidates to replace the present staff and recommending needed changes to PM Decree 471.

All the present WMPA staff are to resign, with the ability to reapply for WMPA positions except for the director, deputy directors and, according to the Secretariat, “all those involved in and accustomed to the current financial structure.” The Secretariat has already advertised the top positions and created a selector group including representatives of NTPC and three international environmental NGOs working in Laos. Ultimately all positions will be advertised and candidates selected since getting the right people in the right places is

fundamental to successful restructuring. There should be a probationary period for all new staff to see that they are qualified and perform their duties well.

At the time of the POE visit, only 20 candidates had applied, four for the top position. Because of the importance of the director to the success of the restructured WMPA, the POE has strongly recommended that the application period be extended and the position be widely advertised, to try to obtain the most qualified applicants. It appears desirable to have only one deputy director from the standpoint of management efficiency. It is also economically desirable because salaries and expenses of the past directors and deputy directors have been responsible for an inordinately large proportion of the WMPA budget.

The WMPA was originally created to have a special status and to be of particularly high national importance, but until now it has not been managed to achieve that. In this regard the POE welcomes the stated strong and active interest of Deputy Prime Minister Asang Laoly in the restructuring. We are also pleased to see the reported reassignment of the chairmanship of the WMPA Board to the Minister of Natural Resources and Environment. The WMPA should become a model for protected area management combining environment and development, for the Lao PDR and for other nations worldwide.

11.2 Reconstituted Board

In order to provide technical capacity and broader experience with protected areas the POE strongly recommends that the reconstituted WMPA Board of Directors include at least two outside members, preferably from international environmental NGOs in Laos, the university, and/or international organizations active in Laos. If the Board is chaired at ministerial level the Lao tradition is that the Board members will not oppose the authority of the chair. Consequently there should be arrangements for the Board to have internal discussions, possibly through technical committees, leading to provision of advice to the chairman. To effectively oversee the WMPA secretariat and provide closer monitoring and input to it, the Board should meet relatively frequently, several times a year.

Until the new structure and staff are in place the Task Force should assign one of their members to supervise the WMPA to make sure that the current activities follow the work plan, and should have a senior fiduciary advisor to secure proper use of the WMPA funds, since the WMPA currently still has the same people in place as in the past when the problems were created.

11.3 An independent IMA and partnerships

The Independent Monitoring Agency (IMA) for WMPA should be appointed and paid by the Board of Directors, not by the WMPA Secretariat, and should be given adequate time and resources on its visits to monitor the WMPA activities thoroughly.

We recommend that the WMPA seek to establish an ongoing partnership or other relationship with a qualified international NGO, like the Wildlife Conservation Society(WCS). On its research side the WMPA should also seek such a relationship with the National University of Laos and with appropriate NGOs such as Analouk.

11.4 Further Revise Decree 471

There are several important changes required in the revised Decree 471. For example, the decree should cement in place WMPA's special status. Also, WMPA should be responsible for the conservation and protection work in the watershed while District staff, primarily DAFO, would handle the development work. For this work DAFO would report to WMPA, and WMPA management must define the work and oversee the implementation.

The decree should also clarify the relationships between Khamkeut and Nakai Districts on the reservoir, and deal with the issues of fishing use by resettlers in the reservoir area north of the Thalang peninsula and adjacent to the villages. (See further proposals in this regard in the section of this report on fisheries.) It should also establish procedures for arrests, confiscations (without return to previous owners), fines, etc. and establish the rules for prosecution and role of the courts. The decree should specify the Board makeup and procedures, as noted above.

The POE recommends that:

- 67/24 The application period for the new WMPA director be extended and the position be widely advertised, to try to obtain the most qualified applicants.**
- 68/24 The reconstituted WMPA Board of Directors include at least two outside members, preferably from international environmental NGOs in Laos, the university, and/or international organizations active in Laos.**
- 69/24 The Independent Monitoring Agency (IMA) for WMPA be appointed and paid by the Board of Directors, not by the WMPA Secretariat, and be given adequate time and resources on its visits to monitor the WMPA activities thoroughly.**
- 70/24 The WMPA seek to establish an ongoing partnership or other relationship with a qualified international NGO, and establish research partnerships with the National University and appropriate NGOs.**
- 71/24 The WMPA, with Khamkeut DONRE involvement, be authorized to establish a permanently staffed outpost at the Old Sop Hia site, whose duties would include working closely with the resettlers' Reservoir Fishery Association, Village Fishery Groups, and Nakai District to manage, protect and patrol the reservoir fishery between the dam and the upper Nam On and to patrol the adjacent terrestrial portion and islands of the Corridor. [Binding]**

ANNEX I: SUMMARY OF ANALYSIS AND ADVICE ON RIP CLOSURE

The POE's analysis and advice

In its 24th Report, the POE has recommended an extension of the Resettlement Implementation Period (RIP) for two years to December 2017, with a review and decision on further extension before that date. The Report recommends actions that should be taken with a view to achieving closure by the end of 2017.

This Annex to Report No 24 summarises the analysis in that report on achievement of the conditions necessary for closure of the Resettlement Implementation Period, and suggests some indicators that the conditions have been met and the actions in the report recommended specifically to attain these conditions.

Under the Concession Agreement, the GoL shall engage the POE at least six months before the end of the expiry of the intended Resettlement Implementation Period to analyse the activities performed during the RIP and report on whether the Resettlement Objectives and Provisions have been achieved. The GoL may also require that the Company implement the POE's recommendations designed to achieve the Objectives and Provisions.

The Table is not a comprehensive analysis of achievement of all the Objectives and Provisions. Section 9.1 of the main Report identifies those requirements of the Objectives and Provisions which the POE has discussed in previous reports, and which it considers have been met. This Table summarises matters discussed in this report that are still require action.

Nor is the Table a comprehensive inventory of everything in the report: it is confined to matters which, in the POE's view, are material to closure and to the recommendations which intends to be binding in terms of the CA.

Organisation of the Table

The Table is organized vertically as a series of topics for analysis (having regard to this "exceptions" approach) and horizontally into achievements, risks, targets for 2017, and recommendations.

- **Achievements:** key points from the discussion in the text of progress towards fulfilment of the CA conditions.
- **Risks:** a summary of the POE's conclusions on what issues need to be addressed if the conditions are to be met.
- **Outcomes for 2017:** some largely qualitative statements of what would give the stakeholders reasonable comfort that the conditions of the CA will be met.
- **Recommendations:** the recommendations summarized in the table are those in the main report which the POE considers are most important for the achievement of the CA conditions. The table includes cross-references to the relevant recommendations and supporting analysis in the main body of the report.

Table: RIP Closure: Achievements, Risks, Outcomes and Recommendations

| Achievements | Risks | Outcomes for 2017 | POE Binding Recommendations (Rec No, Page No) |
|---|--|--|--|
| Household and Village Income Targets | | | |
| Requirements of the CA substantially met for Household Income Targets (LSMS7 March 2013) and Village Income Targets (VIT Survey December-January 2014-15). | Limited information about legality and sustainability of income sources | No substantial deterioration in household or village incomes compared with 2015 Incomes are predominantly legal | Further annual surveys of household income (01/24,6) Include surveys to identify determinants of income sources (02/24,6) |
| Land distribution | | | |
| All original resettler households have basic land entitlements. Land Management Committees established. Additional land allocations underway. | Pressure on housing and agricultural land from population growth, farming methods Illegal migration onto plateau and some illegal alienation of land Land disputes within and between villages | Illegal inwards migration and land alienation stopped District and Village Land Management Committees able to resolve existing and future land disputes Further land being allocated fairly to all households. | Land regulation Resolve existing land conflicts before further land allocations (06/24,17) Start training LMCs (07/24,17) |
| Sustainable livelihoods | | | |
| Fishing | | | |
| Current fishing yields and contribution to resettler livelihoods appear sustainable | Substantial portion of catch caught and traded illegally | Fishing's current contribution to household incomes increased | Specify fishing areas downstream of Thalang bridge. (13/24,20) |

| Achievements | Risks | Outcomes for 2017 | POE Binding Recommendations (Rec No, Page No) |
|--|--|---|--|
| <p>Ten-year extension of resettler fishing rights in place</p> <p>Improved registration of boats on the reservoir.</p> | <p>Policing of fishing and trading ineffective</p> <p>Access to markets varies widely between villages</p> <p>Inadequate understanding of fisheries ecology</p> <p>Northern villages on the Thalang Peninsula have limited fishery access.</p> | <p>Fishing effort continues within economic and biological sustainable limits</p> <p>New regulations redefine resettlers' fishing areas, establish species catch limits within sustainable yields and create zoning for species protection</p> <p>All resettler hamlets have VFGs effectively managing fish trading and policing their fishing zones</p> <p>Village Fisheries Association is effectively coordinating all reservoir fisheries management</p> <p>Significant and sustained reduction in illegal fishing and trading.</p> | <p>Allow Thalang peninsula villagers access for fishing downstream from Thalang Bridge. (12/24,20)</p> <p>Establish outpost at the Old Sop Hia site for fisheries protection. (71/24,74)</p> |
| Forestry | | | |
| <p>Annual cutting quota reduced to realistic level</p> <p>Contracts negotiated for Japanese and Thai markets</p> <p>VFDC in marginally better financial position</p> | <p>Sector continues to heavily underperform and remain unsustainable</p> <p>Income from forestry for villages continues to be a fraction of its potential</p> | <p>The GoL is committed to the communal village forestry objectives set out in the CA.</p> <p>IFIs and NTPC are providing managerial, technical assistance</p> | <p>Reactivate hamlet Forest Management Committees (17/24,25)</p> <p>Organise training of HFMCs and coordinate technical assistance. (19/24,26)</p> |

| Achievements | Risks | Outcomes for 2017 | POE Binding Recommendations (Rec No, Page No) |
|---|--|---|--|
| <p>Small further dividend paid to villagers.</p> | <p>Hamlets and villages have no role in planning and management of forest resource and little sense of ownership of the resource</p> <p>No forest inventory available to facilitate planning</p> <p>Inequitable allocation of timber and NFTP resource between hamlets</p> <p>No plan for sustainable management of forests including regeneration and reforestation</p> <p>Excessive taxation of plateau forestry by GoL.</p> <p>Inadequate GoL, NTPC and IFI support for community forestry.</p> | <p>and other resources to rehabilitate the sector.</p> <p>Hamlet Forest Management Committees expanding their role in managing and planning their forest resource.</p> <p>A comprehensive forest inventory completed with a review of the allocation of forest lands to hamlets.</p> <p>An overall Forest Management Plan for the village forests leading to individual village forest plans.</p> <p>VFDC Board reconstituted with wider responsibilities and representation of HFMCs.</p> <p>Tax, fees and levies revised for a fairer sharing of forest revenues.</p> | <p>Forest inventory for each hamlet and whole forest estate (21/24,26)</p> <p>Forest Management Plan covering management planning, species and marketing and community management. (22/24,26)</p> <p>Technical assistance in forest inventorizing, sawmill operation, forest management planning, marketing and financial management. (20/24,26)</p> |
| Agriculture | | | |
| <p>Recent increase in agricultural intensification on 0.66ha and 0.22ha plots</p> <p>Further fencing of plots</p> | <p>Reversion to swidden on additional lands</p> <p>Unsustainable development of cassava and paddy</p> | <p>Significant further increases in intensification of cropping</p> <p>Every household has access to viable irrigation</p> | <p>Irrigate 65% of irrigable land by 2016/2017 dry season and aim for all households with access to</p> |

| Achievements | Risks | Outcomes for 2017 | POE Binding Recommendations (Rec No, Page No) |
|--|--|---|---|
| <p>Increased use of gully dams</p> <p>Increased resettler uptake of agroforestry</p> <p>Some marketing of dry season crops.</p> | <p>Insufficient accessible irrigation for further intensification</p> <p>Reluctance of resettlers to adapt to new techniques</p> | <p>Contract cropping based on sustainable system of cultivation</p> <p>Further significant increase in agroforestry on the basis of further needs analyses</p> | <p>irrigated land by the end of 2017. (25/24,33)</p> <p>Ensure functional water user associations for each irrigation system. (26/24,33)</p> <p>Monitor hamlet irrigation system organization, WUA functioning, crops grown and yields. (27/24,33)</p> <p>Ensure RMU play a major role in meeting irrigation objectives (28/24,33)</p> <p>Establish a general cassava policy and agree on an acceptable system of cultivation. (34/24,35)</p> |
| Livestock | | | |
| <p>Shift from buffalo to cattle</p> <p>Increased raising of cattle for income</p> <p>Reduction in losses from starvation and disease</p> <p>Improvement in vaccination rates</p> | <p>Carrying capacity of plateau reached</p> <p>Overstocking and low productivity of large animals</p> <p>Low uptake of intensive pastoral management</p> <p>Recurrence of epidemic disease</p> | <p>Significant further development of pasture</p> <p>Widespread adoption of improved livestock feeding practices</p> <p>No significant animal losses from starvation or disease</p> | <p>Training in enhanced soil fertility and plant nutrition and field work and husbandry improvements. (37/24,39)</p> |

| Achievements | Risks | Outcomes for 2017 | POE Binding Recommendations (Rec No, Page No) |
|--|---|---|---|
| Some development of markets for smaller animals. | Failure to realise income potential of both large and small livestock | Further growth in breeding small livestock for market Significant growth in income from large and small livestock | |
| Off-farm | | | |
| Continued training effort in new income-generating skills Improved road access to district increases potential for tourism. | Limited number of candidates recruited for training Low rate of conversion of training into income-generating opportunities. | Significant growth in NTPC-funded training, translated into increased livelihood activities Agreement on tourism development plan. | <p>Training</p> <p>Training based on a further needs and opportunities analysis with emphasis on resettler youth. (41/24,43)</p> <p>Recruit at least 50 resettlers for training during the remainder of 2015 with further increases during 2016 and 2017. (43/24,43)</p> <p>Tourism</p> <p>Assist sector interests to prepare a tourism development plan and set up village-level training programs. (38/24,41)</p> |
| Institutional support | | | |
| Village and hamlet development | | | |

| Achievements | Risks | Outcomes for 2017 | POE Binding Recommendations (Rec No, Page No) |
|--|---|--|---|
| <p>2016-2020 Development Plans prepared for all villages</p> <p>Village Development Funds mostly viable and meeting most demands.</p> | <p>Village Development Committees underequipped to manage full range of responsibilities</p> <p>Inadequate support from District, Village and Hamlet development</p> <p>VDFs at risk to poor management and increasing delinquency.</p> | <p>VDCs have capacity to manage development plans and oversee other village committees</p> <p>District provides support for fully participatory village development</p> <p>VDFs can meet all demands and are financially viable.</p> | <p>NTPC and the IFIs maintain their support for villagers to manage their own affairs. (58/24,64)</p> |
| Future roles of GoL and Company | | | |
| <p>NRO, Nakai District and RMU staff co-located and working more closely together</p> <p>NTPC plans in place for transition and medium term development</p> <p>NTPC commitment in principle to NT2 Development Fund.</p> | <p>Loss of key NTPC and GoL staff during transition period</p> <p>District has insufficient funding and staff capabilities for handover and to support ongoing programs.</p> | <p>NTPC and GoL funding and staff capabilities adequate to meet Ongoing development support requirements</p> | <p>Transitional</p> <p>Extend Resettlement Implementation Period to December 2017 and then review. (44/24,46)</p> <p>Increased GOL funding for requirements during Handing Over. (57/24,64)</p> <p>Reconstitute RMU with full-time manager for remainder of RIP and Handing Over process. (59/24,65)</p> |

| Achievements | Risks | Outcomes for 2017 | POE Binding Recommendations (Rec No, Page No) |
|--|--|--|--|
| | | | <p>Longer-term NTPC to budget for productivity and resource use increase beyond the end of the RIP. (63/24,65)</p> |
| Cross-cutting issues | | | |
| Vulnerable households | | | |
| <p>Nearly all households have met the Household Income Targets (March 2013) and all hamlets have met the Village Income Targets (January 2015). Community Living Well Program in place and new Social Safety Net system handed to District</p> | <p>Wide variance in reported incomes at hamlet and household levels Relatively poor performance of some hamlets and ethnic minorities on socio-economic indicators CLWP and safety net provisions inadequate to meet vulnerable household risk</p> | <p>Groups with relatively poor performance are improving relative to average Adequate safety net in place for households falling below the minimum income threshold.</p> | <p>Focus on natural growth households and poorer hamlets that may include a greater proportion of vulnerable households. (54/24,58)</p> |
| Ethnic groups | | | |
| <p>More appropriate definition of ethnicity in surveys Some analysis of ethnicity and socio-economic status</p> | <p>Some ethnic groups lagging on social and economic indicators Failure to analyse and plan for the specific requirements of lagging ethnic groups</p> | <p>Evidence-based plan for serving lagging ethnic groups is put in place Significant further moves to more balanced ethnic representation on village committees</p> | <p>Special attention to ethnic minorities in training for participation in important hamlet committees. (48/24,53) Plan livelihood development for and train newly married natural</p> |

| Achievements | Risks | Outcomes for 2017 | POE Binding Recommendations (Rec No, Page No) |
|---|--|---|---|
| | <p>Some ethnic groups under-represented in village governance and leadership</p> <p>Settlement preferences of Ahoé households still partially unrecognised</p> | <p>Ahoé households are all settled in their preferred locations</p> | <p>growth ethnic minority households in four hamlets. (49/24,53)</p> <p>Survey Ahoé households as to their current preference for permanent residence. (51/24,56)</p> <p>Allow Ahoé resettled households to return to Old Sop Hia with a WMPA outpost there. (52/24,56)</p> |
| Gender | | | |
| <p>Increase in women's participation in village institutions</p> <p>Women's traditional workloads reduced</p> | <p>Men still in charge of major resource-winning activities</p> <p>Women's training not being converted into livelihood activity</p> <p>Women still under-represented in village governance and leadership</p> | <p>Significant increase in women's livelihood activity</p> <p>Significant further moves to gender balance on village committees and women in village leadership positions</p> | <p>Extend fish processing training for women (15/24,21)</p> <p>Candidates for irrigation training be both women and men. (33/24,34)</p> <p>Develop projects for women breeding pigs or other small livestock. (36/24,36)</p> |
| Natural growth households | | | |
| <p>More extensive analysis and better understanding of situation of natural growth households</p> <p>GoL-NTPC agreement on land for housing and cultivation for</p> | <p>Natural growth households not yet receiving sufficient land for housing and cultivation.</p> | <p>Present and future natural growth households assured of receiving agreed entitlements during the RIP Process.</p> | <p>Decide whether old Army land downstream from Thalang could be farmed by natural growth households (29/24,34)</p> |

| Achievements | Risks | Outcomes for 2017 | POE Binding Recommendations (Rec No, Page No) |
|---|---|---|--|
| approximately three-fourths of natural growth households. | Low uptake of agricultural opportunities by natural growth households | Natural growth households fully participating in agriculture and taking lead in irrigation. | At least one irrigation system per hamlet be operating by natural growth households during the 2015-2016 dry season. (30-31/24,34) |

ANNEX II: CRITERIA FOR CLOSURE OF THE RESETTLEMENT IMPLEMENTATION PERIOD

Overall Criterion for Closure

Reference: Schedule 4, Part 1, Clause 2.1

2.1 The Resettlement Process shall comprise the following three stages:

...

(c) the period (the “Resettlement Implementation Period”), being the period from commencement of implementation of the Resettlement Process, and *ending when the RC is satisfied, on advice from the Panel of Experts, that the Resettlement Objectives and Resettlement Provisions have been achieved*. During the Resettlement Implementation Period mainly implementation activities, as defined in clauses 8, 10, 12 and 13 will be performed as well as all of the remaining planning activities not previously performed or completed during the Resettlement Planning Period as provided in paragraph (b), ...

POE’s Role in Closure

Reference: Schedule 4, Part 1, Clauses 2.3 and 2.4

2.3 Without limiting the role of the Panel of Experts in reviewing the resettlement component of the Environmental and Social Objectives as contemplated under clause 30 of the Concession Agreement, the parties agree that at least six (6) months before the expiry of the intended Resettlement Implementation Period, the GoL shall engage the Panel of Experts at the Company’s cost, and in accordance with clause 30 of the Concession Agreement, to:

(a) review the activities performed during the Resettlement Implementation Period; and

(b) analyse whether the Resettlement Objectives and Resettlement Provisions have been achieved in accordance with this Part.

2.4 If the Company is unable to demonstrate to the Panel of Experts that the Resettlement Objectives and Resettlement Provisions have been achieved in accordance with this Part, the GoL may require that:

(a) the Resettlement Implementation Period be extended for such period as is recommended by the Panel of Experts; and

(b) recommendations of the Panel of Experts designed to achieve the Resettlement Objectives and Resettlement Provisions in accordance with this Part be implemented at the Company’s cost.

Reference: Concession Agreement Section 30 Environmental and Social Issues

30.19 (a) The Company agrees that the comments and recommendations of the Panel of Experts under this Agreement shall, subject to clause 30.20, be binding on it and that it shall promptly implement or otherwise give effect to those comments and recommendations, if:

(i) those comments and recommendations have been made: (A) in respect of matters which are required by clause 30.17(c) to be the subject of the Panel of Experts’ comments and recommendations; (B) in respect of a matter for which the Company is

responsible under this Agreement; and (C) in accordance with the requirements of clause 30.18; or (D) in the form of a written report issued under clause 30.17(c) which has been delivered by the Panel of Experts to the GoL, and

(ii) the GoL has within thirty (30) days of receipt of the written report of the Panel of Experts issued under clause 30.17(c), issued a notice to the Company requiring that it implement or otherwise give effect to the report, and a copy of that report accompanies that notice.

(b) The parties acknowledge and agree that the GoL will be deemed to have given the notice in paragraph (a) in the circumstances of a Panel of Experts' recommendation as provided in clause 2.4 of Part 1 of Schedule 4 where the Resettlement Objectives and Resettlement Provisions (both as defined in Part 1 of Schedule 4) referred to in clause 2.4 of Part 1 of Schedule 4 have not been met unless the GoL has received from both the World Bank and the ADB a notice stating that the Company is not required by them to meet the Panel of Experts' recommendation.

Schedule 4 to be Binding

Reference: Concession Agreement Section 30 Environmental and Social Issues

30.4 (a) (i) It is agreed by each party that its Environmental and Social Objectives as set out in Schedule 4 shall constitute its binding obligations under this Agreement.

30.7 (a) The parties acknowledge and agree that: ... (iii) for the avoidance of doubt, the Company's obligation to meet the requirements of the Panel of Experts in clause 2.4 of Part 1 of Schedule 4 is not a Limited by Cost Environmental and Social Objective.

Resettlement Objectives

Reference: Schedule 4, Part 1, Clause 3.1

The parties agree to take steps to reach the Resettlement Objectives in the course of implementing the Resettlement Process, those objectives being to:"

(a) ensure that all Project Affected Persons promptly receive their entitlements under clause 15;

(b) ensure that Resettlers have their income earning capacity enhanced and achieve the Household Income Target, with adequate support being provided by the parties during the Resettlement Implementation Period;

(c) materially improve Resettler livelihoods on a sustainable basis;

(d) restore livelihoods of Project Affected Persons (other than Resettlers who are covered by paragraph (c)) on a sustainable basis;

(e) have the Project Affected Persons participate in the consultation, planning and design process of their new settlement and production areas;

(f) apply special measures as required towards ethnic minorities and vulnerable persons to take care of their needs and foster self-reliance and to improve their socio-economic status;

(g) provide for the construction of infrastructure in the Resettlement Area in accordance with the standards set out in this Part for the best interests of the local population and the population in and around the Resettlement Area;

- (h) make replacement land available to all those interested with cash compensation only to be considered for those with specific plans to permanently move out of the district;
- (i) conceive and execute resettlement and rehabilitation plans as specific development plans; and
- (j) comply with the NT2 Resettlement Policy.

Resettlement Provisions

Reference: Schedule 4, Part 1, Clause 3.2

The parties agree to comply with and implement the following provisions ('Resettlement Provisions') namely that:

- (a) those persons eligible for Resettlers' entitlements under the Resettlement Process are ... households included in the August 2003 census ... and the natural growth of those households" [Note: additional qualifications and exclusions.]
- (b) those persons eligible for Project Land entitlements under the Resettlement Process are specified in clause 15.2
- (e) the social and cultural cohesion of villages will be protected and resettlement sites will be as near as possible to the previous villages of the Resettlers
- (h) traditional organisational structures, religious beliefs and resource use will be recognised and respected
- (i) appropriate consultation and participation methods are to be used, utilising local knowledge in developing production systems that suit the Resettlers' needs and environment and which results in a self-sustained livelihood
- (l) special consideration will be given to gender issues, vulnerable households and ethnic minorities during detailed planning, design and implementation of the social plans.

Government and Company Roles

Reference: Schedule 4, Part 1, Clause 3.3

The sharing of responsibilities between the GoL and the Company for achieving these Resettlement Objectives and complying with these Resettlement Provisions is set out in this Part and in particular in clauses 7 to 13.

Village Income Targets and Project Lands livelihoods

Reference: Schedule 4, Part 1, Clause 3.4

The parties agree to use their best endeavours to facilitate:"

- (a) the Resettler villages reaching their respective Village Income Targets ...
- (b) Project Affected Persons in the Project Lands having their livelihoods restored on a sustainable basis as soon as possible and in any case no later than: [five years for those dependent on irrigation and 18 months for all others]

Planning Activities in Clauses 7, 9, 11 and 13

Note: many of the activities in these clauses were either performed or have become immaterial because they have been superseded by implementation. But some may require confirmation from the POE. These may include the following.

7 Village Development: Planning Stage

7.5 Preparation of forest and land use plans for each village

9 Livelihood Development: Planning Stage

Planning for sustainable livelihoods

“9.1.1 The parties will plan and implement the livelihood program with the objective of ensuring that beneficiaries are able to derive a reliable income by engaging in activities that are within their capacity, taking into account the availability of resources on the Nakai Plateau and the type of enterprises that they are already engaged in, and thereby contribute to achievement of the Household Income Targets, the Village Income Targets, the Resettlement Objectives and the Resettlement Provisions.” (GoL and Company)

Protection of Resettler forest and fisheries rights

“9.1.2 The GoL will take appropriate steps to ensure that: the forest resources in the Resettlement Area are for the exclusive use and benefit of the plateau Resettlers for seventy (70) years from the establishment of the NPVFA; and • the fisheries resource in the Reservoir (and trading of that resource) will be for the exclusive benefit of the Plateau Resettlers, those currently fishing in the inundation zone (and their respective descendants) for a period of ten (10) years after the Commercial Operations Date and after that period, consideration will be given to granting other parties right but after consultation with and having due regard to the Resettlers’ need.” (GoL)

Mitigating development risks for ethnic minorities and vulnerable households

“9.1.4 The GoL and the Company shall ensure that at all times during the Resettlement Implementation Period, appropriate steps are taken to mitigate against the additional risks to ethnic minority groups and vulnerable households and will ensure that plans addressing the issue of culturally sensitive development of Project Affected People (“Ethnic Minorities Development Plans”) are implemented, having due regard to the SDP.”

Increasing gender equity and opportunities for women and girls

“9.1.5 The GoL and the Company shall ensure that at all times during the Resettlement Implementation Period, the gender resettlement strategy (“GRS”) and specific gender strategy plans are implemented, having due regard to the SDP, in order to provide increased gender equity and opportunities for women and girls.”

9.6 Community Forestry Program

Resettler forestry resource

“9.6.1 The RO, with assistance from the RMU will procure that a plan for sustainable forestry comprising silvicultural management of existing forests and plantations of new resources will be developed immediately after the Resettlers have been relocated and land allocation has been completed. The plan will be developed for the purpose of providing employment and other economic returns to the Resettlers and will be based on the principle of community ownership of the forest resource, allowing the Resettlers to participate directly in the financial benefits from sustainable commercial logging of these forests.”

Main aims: community ownership and management of forest resource, sustainable contributions from forests, off-farm employment and incomes for Resettlers, annual forest resource dividend, multi-purpose use of forest lands, participatory planning for timber and NTFP development, self-sufficiency in timber, fuelwood and NTFPs, watershed protection.

9.7 Livestock Improvement Program

Livestock production

“9.7.1 The Company, with assistance from the RMU, will develop and implement a livestock development program with the objective of enabling Resettlers on the Nakai Plateau to develop productive and sustainable livestock production as a part of their livelihood system post relocation.”

Main aims: improved animal feed, management of buffalo and cattle, improved animal health and nutrition, improved pasture species, improved extension services, upgrading breeding stock ...

9.8 Agricultural Development Program

Agricultural production

“9.8.1 The Company, with assistance from the RMU, will develop and implement an agriculture development program with the objective of enabling Resettlers on the Nakai Plateau to develop productive and sustainable agriculture as part of their livelihood system.”

Main aims: improved soil fertility, cash crops, access to credit, participatory research and extension.

9.10 Fisheries development and management

“9.10.1 The Company will procure development and implementation of a 10 year fisheries development and management program, with implementation to start 1 year prior to impoundment. The objective of the program will be to devise a sustainable Reservoir management program that can sustain itself by meeting all costs of production, provide secure income to entitled beneficiary fishing associations and gradually improve the fish stock to ensure a stabilised production rate by 5 to 10 years after impoundment.”

Main aims: co-management of fisheries for realistic fish catch targets, delineation of fishing zones, fish catch and effort monitoring, development and enforcement of fishing rules and regulations.

Implementation Activities in Clauses 8, 10,12 and 13

8 Village Development: Implementation Stage

8.5 Design and construct infrastructure and equipment: Village infrastructure and equipment designed and built to specification with consultation with Resettlers and incorporating their reasonable requests for modifications.

8.6 Construction of house for each family of Resettlers: Houses designed and built to specification with consultation with Resettlers and incorporating their reasonable requests for modifications.

10 Livelihood Development: Implementation Stage

10.1 Clear and prepare rice areas

10.2 Training for Resettlers on new farming techniques, including irrigated rice

10.3 Provide farm equipment

10.4 Training on other income generating activities and technical support

10.5 Provide other livelihood equipment

10.6 Hand over community forest

10.7 Reservoir management “establishment and operation of a reservoir coordination and management unit”

12 Community Development: Implementation Stage

12.1 Regional Health Program

12.2 Resettlers’ health program

12.3 Provide income support and employment opportunities

15. Entitlements of Project Affected Persons

15.1 Plateau Resettlers’ Entitlements

(a) Compensation and rehabilitation measures for Resettlers

1. Permanent Loss of Land

1.1: Permanent loss of agricultural land: Compensation includes the 0.66 ha per household of cleared and irrigated land including 0.16 for paddy; additional land for agriculture and grazing in Resettlement Area and drawdown zone (if economic and sustainable); perimeter of village land to be fenced

1.2 Permanent loss of residential and nonagricultural land: “Residential land equivalent to the greater of (1) at least 600m² (indicatively 20m x 30m) plot for the construction of new timber house and surrounding garden, or (2) the area of housing land lost”

1.3 Permanent loss of business / commercial land

2. Loss of House and other fixed assets

2.1: Permanent loss of House: For “resettler households”, “All households whose house will be affected by inundation of the Nakai reservoir”, “Households living in Ban PhonPhanBaek as of August 2003 Census”.

2.2 Permanent loss of business/ commercial structure

2.3 Permanent loss of physical cultural resources

3. Loss of standing crops or trees, other productive assets

Covering fruit trees, timber trees, garden and field crops.

4. Loss of Livelihood

“Access to livelihood programs, the objective being to ensure that Resettlers derive a reliable income by engaging in activities that are within their capacity, taking into account the availability of resources and the type of enterprises that they are already engaged in.” Covers also technical training and skills training for off-farm employment.

4.1 Agricultural livelihood

4.2 Forest-based livelihoods

4.3 Fisheries and aquatic products livelihoods

ANNEX III: NTPC COMMENTS ON SUSTAINABILITY AND PARTICIPATORY DEVELOPMENT: POE RESPONSE

Introduction

In its response to the POE's draft Report no 24, the Company made a number of specific comments, which we have addressed as appropriate in the edit of this final report. It also made some more general comments on its interpretation of the POE's position on "sustainability" and "participatory development". As this general discussion goes fundamentally to two of the central concepts in the CA and the development process on the plateau, we respond specifically to it here.

Timeline of sustainability

NTPC position

"Report 24 defines 'sustainable' as an end point state and assesses resettled communities on whether they have arrived at that end point of the process, not whether they are undergoing a development process that has a sustainable basis".

In contrast, according to NTPC: "The CA clearly indicates that the RIP closure is to be assessed NOT on the achievement of end point sustainability, but on the implementation of a development process that has a sustainable basis. The CA clearly does not require communities to have achieved complete sustainability within the RIP, but requires that the process the communities undertake has a sustainable basis, as against a non-sustainable basis."

NTPC considers that "development is an evolutionary process" on which the resettler community has only recently embarked and that "a more logical expectation would be that the resettled communities have achieved the CA income goals and, within the bounds of current knowledge, have been equipped with the basic skills that will help the communities attain a sustainable future."

POE response

The POE's task for this report was to "analyze whether the Resettlement Objectives and Provisions spelled out in the CA have been achieved in accordance with the CA, and make a recommendation to the GOL accordingly on whether the RIP should be ended in December 2015 or extended for a designated period".

Under the Concession Agreement, the Resettlement Objectives include to "(c) materially improve Resettler livelihoods on a sustainable basis". We do not see any ambiguity in that: to enable closure of the RIP, one of the conditions is that livelihoods of Resettlers must have been materially improved on a sustainable basis. We cannot find any significant qualification of that criterion in the CA. Furthermore, it is not "the development process" that is required to have a sustainable basis, but the material livelihoods of the resettlers.

The argument turns on what "a sustainable basis" for material livelihoods means. We have suggested some general criteria for sustainability in the report but our specific recommended conditions recognise that it is a matter of judgement based on observations of activity on the Plateau. In the Table attached to the Report we include some observable outcomes: "largely qualitative statements of what would give the stakeholders reasonable comfort that the conditions of the CA will be met". The emphasis is on "reasonable comfort": not that there must be certainty that the future material livelihoods of the Resettlers will be

resilient to all conceivable shocks but that the conditions for “a sustainable basis” are more likely than not to be in place.

The appropriate basis for argument is therefore not a general definition of “a sustainable basis”, but what it would look like in each relevant field of Resettler activity.

Participatory development

NTPC position

The POE’s definition of “sustainability” implies the “imposition on resettled communities of benchmark standards” and that many POE recommendations “make assumptions as to what the resettlers need or want, now and in the future”;

This definition and these recommendations are contrary to the principles of participatory development, which both have “overwhelming acceptance by development practitioners” and are specified by the CA.

“By recommending the extension of the RIP, the POE is delaying the point at which the resettled communities and the GoL take over full responsibility for managing and resourcing their development plans.”

POE response

We welcome the NTPC’s acknowledgement that the development process on the plateau ought to be on a participatory basis. The delays in setting up the Village Development Committees and involving them in a substantive way in drawing up Village Development Plans postponed such participation for too long.

The principle of self-governance and self-development by Resettlers does not proscribe extensive advice and assistance for villagers to help them take charge of their own development. It also requires a legal and institutional framework for the protection of the commons and property rights and support for village institutions.

It is evident from the POE’s own discussions with villagers that by and large the Resettlers value the assistance and support they receive from the Company and believe quite strongly that it must continue for some time in the future. Senior GoL officials on the plateau share this view - indeed they express apprehension at the prospect of a handover for which they believe neither they nor the villagers have adequate resources or expertise.

We agree that all our recommendations should be discussed with the Resettlers and subject to their endorsement. A good start would have been to have included representatives of the Resettlers in the planning meetings of the last several years attended by the POE. No such representation occurred. It would certainly be useful now to ensure that this POE report is translated immediately into the Lao language, is widely circulated in the villages and is freely discussed at village meetings.

Conclusion

NTPC position

The CA does not envisage that “absolute sustainability” should be achieved by December 2015.

The interpretation of “sustainable” should take into account that the implementation of the provisions of the CA will be supported by the long-term commitment of the NTPC shareholders to the NT2 Development Fund.

The main CA targets have been met.

Additionally, “MDG measurements on the Nakai Plateau are positive and confirm that the Nakai Plateau is better than the national average for 10 out of 11 indicators”.

POE response

The expressions “absolute sustainability”, “entirely sustainable” and “complete sustainability” used in the NTPC paper to depict the POE’s position on sustainability do not appear in the POE text. It is to set up straw men to suggest that they do.

The POE is not arguing that a golden age of sustainability must be reached before closure of the RIP, only that there must be evidence that, on the balance of probabilities, it is likely to be attained.

The POE welcomes the commitment of the shareholders to the long-term development of the plateau in the form of the NT2DF following closure of the RIP but in the light of the above, considers that there is a prior legal commitment of the parties to the CA to ensure that the Objectives and Provisions of the CA have been met.

While it is encouraging to see that in many respects the Nakai Plateau is doing better than average on most MDG indicators, the CA incorporates specific objectives which are the standard by which development on the Plateau is measured.

The POE does not agree that the “main CA targets” have been met. Most of the discussion in Report 24 is of the evidence for that contention. As of December 2015, our view is that the requirements of the CA expressed in the Objectives and Provisions are probably not being met in several significant aspects but that there is a reasonable chance that, given concerted action in the next two years, they could be.

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